Transcript of U.S. DEPARTMENT OF EDUCATION NEGOTIATED RULEMAKING

Date: March 23, 2016

Case: U.S. DEPARTMENT OF EDUCATION IN RE: NEGOTIATED RULEMAKING

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March 23, 2016
ESSA negotiated rule-making session.

Ms. Podziba: My apologies we need to revisit the proposal to form a subcommittee that came up yesterday at the very end. According to our protocols a subcommittee is of the committee, and therefore the committee needs to decide whether or not to form it. If you want to look at it, its section on participation paragraph E refers to subcommittees. So what I would like to do is ask Mary Cathryn to make a proposal to form a subcommittee, and we will see if there's agreement among the members to do it. I just want to say a subcommittee is formal we have the rules about notifying people and everybody can participate in it, so there are subcommittees and there are offline groups of people who get together to discuss an issue. I just want to differentiate between those

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Ms. Ricker: Thank you so much. I actually have no particular expertise. The proposal happened earlier in the day by Rita and I felt like we hadn't really flushed out what Rita's requests. I will pass it along to Rita who had initially brought up the idea to a subcommittee.

Ms. Pin Ahrens: I think the proposal was to create a subcommittee to look at the definition's that are currently existing within the states for students with the most significant cognitive disabilities, and to come up with a shared or common definition that would be considered for the regulation.

If I understand the proposal is to, the proposal is for subcommittee to develop a proposal to the committee regarding a definition of students with the most significant disabilities. So is there a discussion? -- Susan:
Mr. Payment: I would suggest the manner we do this. I like the idea, I would like for the committee to consider the subcommittee to consider the pros and cons along with substance of it. Because sometimes when you define it then states will come right up to the line and they won't go past the line. We don't want to unduly limit it. Not defining it might mean they define it on their own that might be one of the questions I would like to ask the committee to consider. Whether you know it or not is based on the air-koi Confederacy great law of peace which is consensus building which is methodology. Given that we have a big committee and I don't want the subcommittee to work on a bunch of stuff that comes back here and we pick it apart and throw it away that's from experience with council. If you have a subcommittee and if you work via conference call that you invite everybody to
participate, but it would be the people that have the most interest of course that would be the ones that would chair the committee or lead the committee or that you circulate the conference call information, so everybody can participate so we are on the same page and we are not rehashing it once we come back together.

Ms. Podziba: That's in our protocols that all members are invited to participate in a subcommittee and we will provide notification of all meetings two to three days before if practicable. On the question of forming a subcommittee as described by Rita is there any dissent from forming that subcommittee?

Mr. Wilbanks: I don't necessarily want to dissent, I mean, if they want to meet and discuss, I question the need for the definition.

Mr. Evers: Somewhat the same. I am
1 not sure there's a need for a definition and
2 going back to kind of narrow view of where it
3 also is not something that's explicitly
4 authorized by the law, so I am concerned as a
5 subcommittee does some work I will be sitting
6 back here saying I don't know about that
7 because of that reason. That's my thought.
8 Ms. Podziba: Should I take there is
9 a dissent, which means there would be no
10 formal subcommittee?
11 Mr. Payment: So I would like to
12 offer -- I am not sure if the order of this
13 process. It would be a friendly amendment
14 which you can out without objection if the
15 subcommittee purpose is to first consider the
16 pros and cons of further dividing severely
17 cognitive terms, and if it's needed and you
18 have that as a primary question, and then if
19 there seems to be unanimity to move forward
20 and then that addresses the gentleman's
21 concerns.

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Ms. Podziba: With that friendly amendment is there a dissent from forming a subcommittee? Okay, there is not. There will be a subcommittee and who will take responsibility for scheduling and notifying? Who will be on that committee let's get the names of the people who will be on that committee? Ms. Pin Ahrens, Mary Cathryn. Mr. Payment, Ms. King, Mr. Hager, Ms. Goings, Ms. Mack, Ms. Briggs. Okay. Can the Department help schedule a call and a call in number for them?

Mr. Rooney: We can provide a conference line. Is there a person on the committee we should talk to or should we just send to it all the people on the committee? I'm not sure the process at this point.

Ms. Podziba: We will work out the logistics. These are the members that have identified themselves. The whole committee will be notified when that conference call
happens. Okay. Thank you. Patrick, I think we are ready to move forward onto issue 5 A.

Mr. Rooney: So issue 5 A and 5 B are how we include English learners in the state's assessment system. 5 A is around the inclusion of English learners and the academic in the reading, math, science and arts assessments. Later this morning we will talk about 5 B, which states English language proficiency assessment. For now we want to focus on the academic assessments before we start we ask Kenji to say a few words about the English learner assessment system before we dig into the conversation.

Mr. Hakuta: So good morning I would like to start by giving you some general background on English language learners addressed in elementary and secondary education act in the ESSA that led up to where we are today. Let me just ask Patrick then I have a few preparatory remarks for 5A.
and I can go into that as well?

Mr. Rooney: I think that will be helpful.

Mr. Hakuta: One will be the general background on ESSA and to 5A. So one thing to note is just the changing demographics of English learners and the progressive inclusion of English learners of ESEA over time. It started back in 1968 with the amendment to add title 7 as an education act in 1968 and comes to this date, and as the through successive reauthorizations the population of English learners has grown and changed over time so that today the, you know, the numbers are really just made up numbers in a sense that states vary in their criteria and so forth, but any estimate that's given this date given somewhere around the five million plus range as well as maybe in almost an equal number of students who are formerly classified as English learners and
1 having been classified. It's a significant number over time. During that time ESEA has changed from initially essentially grant programs to districts, and to states to the standards base framework reform that we see today as well as the development of accountability around assessments by states and issues of inclusion of students in accountability. In 1994 which was the improving America's schools act that's when standards base reform came into play and the inclusion provisions through language that's still part of ESEA that academic assessment being conducted in a language and for more most likely The focus moved away from a bilingual education which is instructions through the native Language and up to that point, and with standard based reform became more focused on inclusion in the standards based reform. And then it's noteworthy that 2001 with no child left behind that we gain

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accountability in separate requirements for
English language proficiency assessments
aligned to the state standards in English
language proficiency which led to the
development of assessments in English
language proficiency that we see in title
three. That's what came in no child left
behind. The quality of assessments both in
academic assessments and in English language
proficiency need to be viewed in light of
these historical at ESEA moves decisions from
accountability to states and the
characteristic is the inclusion of English
language proficiency assessment in title one
and accountability and which really in a
sense completely had full New Mexico English
learners represented in the successive
changes in the ESEA, and so that's really
noteworthy and the final note around context
and trends there is a renewed interest now in
various forms of native language instruction

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or bilingual education, two way immersion programs and states sale by literacy that is adopted by 18 states as well as continued efforts and revised native Indian languages. When thinking about native assessments in the language there's a couple of comments in the inclusion of academic assessment which is a topic of 5A which is how to make assessments and literacy and math and science as valid as possible for students included in the accountability system, and this is a quote from the law to the extent practicable assessments in the language and form most likely to yield accurate data in what EL's known in content areas such as math, reading, language and science until student’s achieved English language proficiency, so there's also question of whether the states should make academic assessment available through the student’s native language. There is a growing literature in accommodation practices
such as extended time, availability and
glossaries and dictionaries made possible
through technology read aloud instructions
that illustrate best practices for
accommodation for EL's that should be made as
widely available as possible. We also sort
of know now that assessment through the
native language, the assessments conducted in
native language will benefit students, but
only really appropriate for those who are
newcomers from those languages or those who
are receiving instruction through the native
language, so even if your language, language
proficiency may not be perfect if being
assessed in the native language if you are
not instructed in the academic language of
non-English language would not help those
students as much as we would like. So the
final point I would like to make that these
accommodation practices of student academic
achievement have been operationalized at
scale and some of those are in the handouts and that accompany 5A and states like New York and various state consortia.

Ms. Podziba: Are there any clarifying questions for Kenji?

Ms. Pin Ahrens: Sure. All right I wanted to ask about the last point that you made Kenji about the native language assessments not helping as much as possible. Does the empirical evidence show a small significant effect or is that it is more effective for those that received formal instruction? Is there still a positive effect by providing to those who have not received formal instruction in their native language here in the U.S.?

Mr. Hakuta: You would have to resort to reason and theory on how much access is possible through English. Most study's that have looked at, for example side by side availability of languages, so if you have a
two assessments next to each other to show
that kids will still just stick to one side
and not go back and forth and so forth. I
don't know of any study that is specifically
asked that question and made those
comparisons. Sure you know if there's some
balance to how much proficiency you have in
English to the extent that additional
information would help if the student had
literacy in the native language. Usually
many of the constructs being assessed are
things that we have in math like ratio or
rational numbers are not things unless you
are instructed in that that's not an everyday
language that you use, and therefore for
something like that we can reason that it
really wouldn't help you even if you are
assessed in you your native language.
Ms. Pin Ahrens: I know states
provide side by side accommodations where
both the native language is presented at the

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same time that the English language is presented so that student cans choose whether they want to look at the question in the native language or they look at the question in English. Do you have any -- can you talk about these and whether -- and what the findings have shown for this sort of presentation?

Mr. Hakuta: It could help but it could also be a distraction if it's time limited for example it could be a problem. Again, I don't know of any specific studies that have really addressed that and that's kind of you know have some sort of way in which you would try out things and see if they are helpful or not?

Ms. Carr: Yes, the national center of educational progress has conducted such studies. We have bilingual booklets and we can determine if the students are actually using them, and we also have the dictionaries.
that they can use and mostly the students will stick with the English side. They occasionally look at the Spanish side, maybe if there's a word they want to translate. Typically they do not use the English only side of the booklets.

Ms. Pin Ahrens: So are those just in Spanish in terms of study?

Ms. Carr: The booklets we have are only in Spanish and it's only for mathematics.

Ms. Pin Ahrens: Thank you.

Ms. Ricker: Thanks. I have a quick question about the benefits of newcomers taking the language in or taking a test in their home language. I am wondering if there is a difference or a significant difference between newcomers with limited or interrupted formal education versus newcomers who have no interruption in their formal education?

Mr. Hakuta: For students who come...
from educational background in which assessments of the sort formal assessment is part of what they are accustomed to. It's just a matter of you know switching the context is similar and so forth. That will be kind of appropriate situation. I remember a case --

Ms. Ricker: Is there a significant difference in benefits.

Mr. Hakuta: I was going to contrast that for students that have interrupted formal education for whom there is when the Moun population was settling into California and California had a very rigid system of assessing everybody from immediately when he even pencils were a novel technology for the educational environment for some of these students who come from refugee camps, certainly that with making assessments the concept of assessment is novel and assessing the English is just as a kind of almost
absurd situation, so yes it does matter

whether you have familiarity or not with this

assessment.

Ms. Ricker: Which newcomers does it

benefit greatest?

Mr. Hakuta: Certainly students

coming from educational systems and grade

appropriate grade level, appropriate

education and in their native language. If

they come from the countries in settings

where they already have technology available

or they have formal assessment that will

definitely benefit those students.

Ms. Pompa: I'm not sure if it's a

question for Kenji it's a -- on in the back.

I am wondering if someone from the Department

is going to give us a brief overview of an

explanation of what it is.

Mr. Rooney: Let me get to the issue

of 5A and we will get to that.

Mr. Payment: So I need a couple of
minutes. I want to give a brief orientation of my understanding of the issues. I serve on the HHS secretary tribal council. We wrestled with the historical trauma and the high rates of suicide and accidental deaths that are related to those who studies social science historical trauma. It is really similar to social anime and the study of your kind and social anime. High rates of suicide and accidental deaths, and we are seeing almost epidemic proportions of accidental deaths related to drug over dose at this point also, alcoholism and transients and low education attainment. We have the worst of the worst statistics on all scales for education attainment for American Indians. Earlier we did our -- and yesterday and today Leslie did our blessings in Ojibwe. We are going to do your knowledge and comprehension and recall of that. How many are comfortable with that? (laughter) the history of
American Indian participation in education is
real quickly as treaties were signed and the
federal government obligated themselves into
health education and social welfare for the
millions of acres of the land that were
transferred. That is a legal document. Some
people say why honor it. It's old antiquated
document. It's pursuant to the constitution.
Then the federal government identified ways
to basically get out of the responsibility by
under counting and by using a quarter blood,
and we are the only dogs an Indians are the
only populations that have to prove their
percentages where they are and the boarding
school experience was to strip of us our
culture identity and language. The BIE
director right now talked about his
grandmother who in the boarding school who
would speak Navajo would take her in the
bathroom and drag her tongue across the
floor. It's cultural assimilation tragedies.

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There's several reports like the Miriam report, the 1969 Kennedy report, 1974 the Indian education self-determination act. In 2014 real recently the BIE in education did a report and what they found was that from consulting with tribes, so listening to tribal nations was that the absence of our culture and languages is the reason why we have the high rates of everything we have. That ties right into social anime and historical trauma. We believe that being able to provide culture in our school systems. The 92% go to public schools. The Department of education in that domain and how can we effect that so providing language instruction and culture and immersion schools where possible is really the solution, and the responsibility of the federal government because the federal government created the situation of historical trauma where cultures were stripped away and they have the
responsibility to put that back. Leslie is going to talk more specifically about what's needed in terms of assessment so I understand that issue in terms of how do we assess both the acquisition of our traditional language, but also how do we assess other content areas through that lens and earlier or yesterday the day before I explained that we understand things and native languages is a very literal way and a very explanatory way. When we can teach that and if we could learn to teach math and science that way and it's called whole part whole, and they are translating over to my western civilization knowledge. People have a content to understand stuff that's the way they want to learn. I think Leslie has more to say specifically in terms of what our needs are in need of native languages and the content of native languages.

Ms. Harper: I had a few clarifying
questions but I will recede that right now until we have heard from the others. There are some items coming up and some conversations already. I will wait until we heard from the folks up and then I will ask my questions.

Ms. Podziba: Thank you

Ms. Jackson: So I feel like first of all thank you for being here for sharing that. I would be curious your thoughts on, in reaction to what I am about to say I don't mean to step on what you just said. I want to clarify that the issue papers 5A and 5B are related to the federally required academic assessments and not necessarily all assessments that children are given in terms of accountability purposes. I just want to frame that because the purpose of an assessment should inform the conditions in which you that you have given, and so what I would use to assess a child who's new from a
Mr. Hakuta: My remarks were addressing specifically the -- in the title one, could say lot more about assessment for instructional purposes and assessment from progress and so forth. My comments were really focused specifically on these sorts of assessments that are used for the purposes of the ESEA.

Ms. Podziba: What I am trying to do is get the final clarifying questions for Kenji then we will ask Patrick to introduce the issue paper. I understand there will be clarifying questions for Patrick, so of the cards that are up, are there questions for Kenji?

Ms. King: I am building on the
framing context phrase just reinforcing
Aaron, what you talked about and the need for
historical context and all of this. English
language was used as an impressive tool to
deny people their Identity and historical
access to English language supports for
immigrant children and the children of
immigrant’s was used as a way to -- exclusion
from mainstream schooling. There's
definitely a very explicit amount of children
not being allowed to attend school. When
they were attending school not receiving the
supports they needed to acquire English
language. Thinking about both ways in which
sort of it was used to be an exclusive in
different ways for different communities.
The history of the ways in which language is
used to reinforce suppression and inclusion.

Ms. Podziba: I am going to ask
people to ask questions of Kenji. Some
people are expecting that rule and they are
not putting their cards up yet. In order to
give everybody an equal chance to give
comments about the issue I am going to ask
that people have questions of Kenji to ask
them.

Is there any demographics about the
instruction in native language whether it's
Spanish or other languages. I am from
Washington State which is a bit of novelty in
terms of the provision of instruction I am
curious if there's any studies or
information?

Mr. Hakuta: I could ask Peggy if she
has information on this. I am not aware. I
can't give you a number. There are also
state laws that prohibit instruction in the
native language such as California with
proposition 227 and then several other
states, so there are state-by-state stories
as well? I don't know of any specific number
and partly that's because program labels
1 don't always correspond to the actual
2 instruction that's provided so something
3 that's called by may not necessarily be
4 bilingual. It's just because of the shortage
5 of teachers that speak with native languages.
6        Mr. Rooney: Are you asking data
7 state level demographic data for bilingual
8 education programs? Is that the question?
9        Ms. George: I am not sure I am
10 trying to figure out a sense of the
11 availability of instruction in native
12 languages whether that's bilingual or
13 otherwise.
14        Mr. Hakuta: There's some you know
15 data sets monitoring of not by federal
16 government, but of for example dual language
17 or bilingual like two way immersion programs
18 that know instructions that provided in the
19 native language that has an exclusive goal of
20 the program. It's far more difficult to tell
21 if a program is called bilingual whether in a
transitional program, but a percentage or how much native language is being used.

Mr. Rooney: I know our English acquisition program had some data. I can't speak to that it's something we can look into data to see if there's a bilingual education program. I don't know if there's a great data source across the country. For the most part that's not a state level decision. I think it's a local decision. I don't think there's state data or information by state by bilingual education programs happening in states it's not necessarily state data. I think it's more of a local decision.

Ms. Pin Ahrens: I do have a question for Kenji. I wanted to remark that I appreciate Aaron's comment. My first experience with the American education system was being forced to stand in the corner and I would be denied lunch when I did not speak English. This is what I think what frames my
perspective I am going to ask Kenji. What does the research say about the average time for acquisition of English oral language proficiency versus academic English proficiency and what is the implication for validity in reliability if you are giving somebody who is not proficient in academic English proficiency a test in English without those linguistic accommodations?

Mr. Hakuta: Thank you. That's an excellent question. If I were to put a number and let's say you say you put a criteria like on a English language proficiency measured orally, so this is the listening and speaking skills on state an English language proficiency assessments and ask how long does it take for students to on average to attain proficiency for let's say 75% of the students? I would put that number and that's somewhere between two to three years. And if for let's say academic aspects
of language such as literacy, reading and writing years that's 7-8 years is how long it will take. That's under the condition that is really dependent on things like the level of development in the native language that students have that are coming in so including pre-literacy sorts of skills. It would depend on the level of English that they already had when they come into the system, so it really matters whether you are at basically zero English versus some intermediate state of English. If you have siblings who brought some English back into your home that will accelerate the language proficiency development, and then there's also understanding that we have of the relationship between English language proficiency and performance on academic assessment. Essentially at the lower levels of English language proficiency performance on an academic assessment in English language.
arts or math or science is essentially a measure of your English language proficiencies so you can show correlations that are quite high between either English language proficiency and the performance of the academic assessments. It's really in that sense those academic assessments aren't the measure of the academics, but rather of how much your understanding instructions and the prompts in the assessment. At a certain point that relationship goes away with suggesting it really is being more of an assessment of academics. We also know through the older assessments these are different standards because the standards are changed, but there are differences between English language art and math, so in the old standards students that relationship between English language proficiency and performance in math went away sooner than it does in English language arts which isn't surprising.
1 It has a lot more language demands. That's likely to change now that math has a lot more language demands around explaining the reasoning and so forth. At least in the old assessments we know that there are disciplines specific differences depending on the language demand of the content that we need to pay attention too. So basically three to eight years or something like that would be that range for I hope that is a satisfactory answer.

Ms. Podziba: Let's take the four last questions for Kenji then I will ask Patrick to introduce the paper issue.

Mr. Chau: We serve the most English learners than any other district in the country. I have been remarking about some of the experiences that we have in posting a question to Kenji and to share with the group a little bit about some of our experience around long-term English learners, and how
we define that and the impact on assessments around that. My other follow up questions was in terms of length of time that student’s takes to learn English. I would love to hear your comments about kind of the description of English long term English learners and how that effect as performance in school as well as you started touching on this at the end of your last remarks around how some of the new assessments particularly our newly designed computer adapted assessments that are a lot more language or effected especially based on some of the language in this regulation that talks about proficiency in the language and then proficiency in the content area, so I would love to hear your thoughts on that.

Mr. Hakuta: On the long term English learner it's a space in which there's been a lot of attention in the last I would say five or six years if not a little bit more. And it's hard to say often long term English
learners is really more of an outcome of not successfully serving students. These are students who have been identified and continue to be identified and not be classified into proficiency in English and some states follow re-designation or reclassification for some substantial period of time and depending on the state, some state laws have started to define this. It's usually between five to six years, so if essentially if you are middle school and you have not been reclassified in the system from somewhere in the early elementary grades then you are considered a long-term English learner. ESSA as I understand it within title three has some reporting requirements related to students who have been in the EL category for some time. It's a substantial number, and if you go to most middle school or high schools and look at the population of student who are identified as English

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learners most of those students will be in
that category so newcomers take up I don't
know what? There is no national average on
this or the national average would be
meaningless because the criteria vary from
state to state and in some cases across
districts within a state such as the state of
California. Somewhere in short of ten
percent is in newcomers in the later grades.
The rest have been kids in the system and not
been reclassified. It's hard to say which is
cause and effect. We know that these
students need to be served. There's a much
higher rate of students who are classified or
also identified as disability intra group by
a factor or magnitude of three to four times
as likely in the younger populations, and so
it's clearly a student grouped with
significant need. Most of these students
basically have not met the criteria for
reclassification. They may be quite fluent,
in fact, maybe stronger in their language

skills in English than they are in their

native language. They are stuck somewhere in

the higher levels, middle to higher levels of

English language proficiency that are still

and may even have tamed proficiency in that

but have not met the other criteria that

districts or states may require including

often some kind of proficiency level in the

academic assessment. That's the long-term

English category. That's an important point

to make because we need some sort of

differentiated understanding of an English

learner who's in K-3 let's say versus in the

6-8 or even in high school so that's the

point I wanted to make about that. In

response to your question about the computer

adapted or I'm sorry --

Mr. Rooney: The second part of your

question is about particular tests that have

been administered at. I would like us not to
1 address that. I think any particular
2 assessment I don't want to get into the weeds
3 of a state of a particular test of a
4 particular state is using. I think generally
5 talking about we want to have guidelines as
6 good assessments criteria for all states. I
7 don't want to get into any particular test
8 that's why we have a peer review process. We
9 will evaluate documentation about how the
10 test was developed and administered to
11 evaluate the quality of assessment.
12 Particularly as regulations are helping to
13 figure out what are the perimeters that are
14 established to make sure it's a good test.
15 Mr. Hakuta: I was going to make up
16 an answer anyway.
17 Ms. Harper: The conversation here is
18 being highly dominated of context of
19 immigrant students there's several
20 definitions of EL student’s that we review
21 and as we take the experts comments and

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there's several categories of EL students that carry over in the ESSA. The other question for Kenji is you were talking in an earlier response about the cognitive academic language proficiencies and the amount of time required to obtain that, and so then I was going to ask you as well while we are talking about obtaining cognitive academic language proficiency tell us about language transfer, how that transfers over per content matter? Can you talk about that a little bit, the idea of common underlying proficiency idea and that kind of stuff? I am setting a context for content area academic assessments and our EL students.

Mr. Hakuta: Yeah you know the idea is that language is much more than asking for directions to the bathroom basically or social language. In that there is quite a bit of research showing the transfer you suggest which is really why students are...
instructed exclusively in one language once

they develop academic proficiency could

transfer much of that into the other

language. It's also why students, immigrant

students who come with strong formal

education and their native language also

developed English graphically as well as

academic proficiencies. I think that's quite

well established that there are relationships

between them. The relationship between

language and academics is also really defined

or broadened into vivid focus with the

college career readiness of standards and

academic. Language plays an important role

in the way they are identified. I would say

that area of language and how languages are

used, for example, argument for explanation

and so forth. Those are things that transfer

very much across languages that will fit

within what you are describing as talk. Very

few people use that term any more. It does
Ms. Jackson: Hi, Kenji. You mentioned for academic proficiency about 7 to 8 years. I am wondering if that is the average for learning a second language or if that would also be appropriate for our all of our regular students who when they are in third grade are about eight years old?

Sorry, so I am not trying to be like got you on this or anything. So you mentioned about 7-8 years to develop academic language proficiency there's different terms for that.

I am wondering if that's the average time for students acquiring a second language or would it apply for our general students as they are growing up and given that third graders are about eight years old in their first round of testing?

Mr. Hakuta: I think you are referring to the fact that kind of academic

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literacy is something that is true for all
students that you know, so if it just takes
you know the language used and required by
the disciplinary practices that are contained
in that are in math classes or sciences and
English language arts working with complex
text and so forth is kind of a it's a use of
language which is novel for many students not
just English language learners, and I think
that those are the things that take time. It
is shared so that you know assessments that
are used let's say that let's look at
academic language or however you define it if
you administered it to English only kids a
lot of English only kids would also struggle
as well. I think that's the point you are
trying to make and in a sense we are talking
about a situation of, you know, English
learners are a bit like the canary in the
minds that the struggles that they have with
language really show up and are really
presented to us in our face, but this is something that all students really struggle is it's just that English learners have that additional thing of being in a new culture or new setting and so forth. I think that or at least that's what you are trying to refer to?

Ms. Jackson: Thank you.

Ms. Podziba: I am going to turn to you and ask you to introduce the issue paper for 5A.

Mr. Rooney: Great thanks. I definitely appreciate Kenji's introduction. This is going to be a very rich conversation. I am looking forward to it. I did want to provide a little bit of context for the issue paper and walk you through briefly the additional data that we provided in everyone's binders to give you that context. I think the issue paper is focused on specifically around native language translation assessments. I did want to step
back a second and say that this is within the context of how this state is making sure it's assessments are valid, reliable and accessible for all students including English learners. Similar to yesterday when we talked about students with disabilities. There's a similar requirement in the ESSA it's not in the NCLB which is not new that states need to make sure they are including all students including English learners to make sure the test is valid and reliable and accessible for English learners. The states long history and they have been adding and approving accommodations over the past 15 years as they continue to enhance their assessments. The challenge is for many students particularly newcomers and we are talking about all English learners as kenji is pointed out there's a lot of recently newcomer English learners, and native language translation maybe needed for the
students to demonstrate what they know and can do so that way you have a valid and reliable result of how that student is and what knowledge they know and how to provide resources for that. If you look at the top paragraph the last sentence tries to include the language. The language from NCLB to ESSA has not changed significantly, but there is an important distinction that got added to the statute this time that we want to spend time on this morning which is that you look at the sentence in 111 (B)(2)(F) so sorry for getting into the weeds of the statute of the law. It requires that each state identify in its state plan, languages other than English present to a "significant extent" that clause in quotation marks new, and it's participating student population and indicate the languages for assessment are not available and are needed. The state must make every effort and they request assistance.
from the secretary. That is what the statute requires. It's a small component's. We want to spend some time talking about what that might mean. Looking historically in the bottom paragraph here and then some of the paper we provided in the background provide information about how states are generally trying to address this in the past. Many states have added native language translations of their assess MS translating the whole assessment or directions or parts of their assessment. If you look at the first attachment after the issue paper it gives a list by state of the number of English learners in the state and then what native language assessments are offered. There is a third column which I will explain why that's there whether the state is a member of currently member of an assessment consortium and to remind everyone there's two groups of states that formed to develop new
reading language arts and assessments back in 2010 those assessments were given in 2014-15 and as part of the development the states that came together to develop those two different assessment systems both created native language translations of their assessments part provided the options for its members states to have a Spanish language math test, and smarter balanced also provided a Spanish language version of its test which actually it's a stacked translation both the English and Spanish are both side by side, and they translated the test into the ten most popular language among states that are in smarter balanced. They provided some -- we wanted to add the column the last year we have data for it is in 2013-14 and the stated that switched to smarter balance in 2014 have different options for their students than they did in 13-14. We wanted to provide that context for you. The second
chart which is a little bit more confusing I am going to spend a minute to walk through it so you can understand it gets to the question about what does significant extent mean. We wanted to provide data to help inform the conversation. We looked at from the most recent data we had available. We looked at the percentage of students who are English learners and at different thresholds of populations within the state how many languages would fall into that category? So hopefully that makes sense. If you look at Alabama if you were to say a significant extent means five percent of the population and five percent of the English learners and that would be the only language spoken by five percent of the population. If you look at Alaska that fits into five languages Yupik, Spanish, Tagalog, Inupiaq and Hmong. As you go towards the right in each state as the threshold gets higher you can see how
many languages are still incumbent in that definition the Alaska one is helpful as a reference if you go to the ten percent column only two languages Yupik and Spanish falls into that category. To a significant extent and ten percent of the English learner population that would be Yupik and Spanish would be languages covered in Alaska. This tries to provide some context for you to understand how popular or how a populous or common different languages are being spoken by the English learners in each state. Are there any questions on the data?

Ms. Podziba: Is your question on data?

Ms. Jackson: For the numbers or the criteria in terms of threshold is that for K-12 age children or like the whole state population?

Mr. Rooney: K-12 population? Good question. Thank you. Back to the task.
that's correct for the SS test?

I think this was to Audrey's point earlier this is where we are focused today and states are required to give in order to meet the federal requirement to test once in each of grades through three and once in high school in reading arts and mathematics once in elementary and middle and high school essentially and they actually 3-35 and essentially it's science and elementary and middle and high school. We are talking about the assessments for reading language arts and math and science to meet the requirements in the federal law. Thank you

Ms. Evangelista: If that's the case I want to clarify one thing for New York. It says that the science was offered in three languages, but it actually and the math is offered in the five but actually the science unless something has changed? It has always been offered in all five.

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Mr. Rooney: Thank you for that information. Sometimes we are not one hundred percent in our data. The issue paper and now that we have provided the context the law says that so there's the two clauses that were quoted in the issue paper that I mentioned. The first was to a significant extent the second extent to make every effort that the state must make every effort to develop assessments. NCLB it's not a new clause added to the law and in the past the Department did not write any regulations or guidance on what that means. I think the question that we want to have for this group is whether it's helpful for us to provide some further information or clarification around what it means to make every effort to provide native language translation of tests. I think in just as a last point before we start the discussion, and the questions that we have we know that states context for this
and some states have English only laws which means they don't have the legal authority to arrive in the native language of the assessments, and if you discuss if it's helpful about how that state law interacts with this piece that's in the federal law that just got passed. We want to make sure that's a challenge in some states and think what that might mean in the statute and regulations we are thinking about. I would like to open it up to discussion questions if that's okay. The first question is that statutes specify that a state must make every effort to develop assessments after languages other than English that's significant to every student population in the state. There's two questions to this what must the state do to demonstrate its effort to make every effort. Related to what constitute as language to a significant extent. We will start with the make every effort question.

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Ms. Jackson: So what you just referred to about the legal or the dynamic between federal and state was exactly my question. I know you said you could explain it if you would like to do it later. I know Massachusetts does have an English only law and that chapter 71A I think that's moving up through the levels to try to change that. I was curious about that dynamic.

Mr. Rooney: Clarification is helpful. I am happy to turn it over to Kay.

Ms. Rigling: I think the critical words here are make every effort. I think the normal rule is that in order to receive federal funds is if there is a requirement that applies to the received of those funds then the federal law would govern, and if there is a conflict with state law, state law would have to change. The facts here that says make every effort I think is a qualifier.
and that language would be read in the
context probably of the English only state
laws.

Ms. Pompa: Thank you. I hope you
will indulge me all of you because this is a
particular passion of mine and it's an
opportunity to talk about English learners in
the way that ESSA brings in terms of my
forefront that is by including the English
proficiency in the overall state of
accountability. That's why this is important
to all of us. That change has lots of
implications for assessment. We are not here
to regulate accountability. I think many of
the assessment issues we make will impact the
accountability assessments we make will be
important, the languages that they need
assessments in to ask for help has been in
place since 1994. I became director of the
office of bilingual education and the federal
government in 1995. In that year we sent out

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1 a request for states to tell us if they
2 needed help. Nobody responded. Looking at
3 this 25 years later I think it's time we take
4 this head on. The comments I am about to
5 make really I am trying to keep in the
6 context of the assessments that are required
7 of ESSA. I think it's important that all of
8 us think about it that way. I too was in a
9 school that was prohibited for speaking
10 Spanish. I am too many in our generation
11 lost our native language because we were not
12 instructed in their native language. I think
13 it's extremely important for all children to
14 learn languages and particularly for English
15 learners not to lose their language. I think
16 there's remedies elsewhere in the law. I do
17 want to remind us that right now we are
18 talking about the adjustments to or the
19 accommodations of the native language to the
20 assessments that are specified in the
21 legislation. Given that what I would
recommend is that we ask the states for the first time after 25 years to give us much more detail about the languages in their states and that be part of the regulation. And that's a complex thing because it's not only the number of languages that are present it really is very closely tied to the instruction that is provided in that language. As I said I am a firm believer that instruction should be provided in the native language, but that's a fight that takes place elsewhere and it's another part of the legislation, so I do think it's important to look at whether instruction is offered in those languages, but I think that there are other elements that we should look at and the state should look at as part of the larger network about decision of how native language assessments are offered for this. One is the distribution across the grade levels of those speakers. We do not
1 test kids or are not required to test kids in
2 K-2 that is where the preponderance of
3 English learners are. That does not negate
4 the fact that there's many states that have
5 English learners at the grades we do test.
6 It's important to look at that. It's
7 important to look at the use of the
8 assessment so the fact that you don't have
9 native language assessments for this
10 particular use should not preclude native
11 language for diagnostic purposes to go hand
12 in hand with the English testing and a lot of
13 states do that to give you more information
14 about what students know not what they don't
15 know. Again, that's not part of this. I
16 also think we need to look at the plans of
17 that state. As Kenji pointed out there's how
18 many states now that have the seal of bi-
19 literacy, 18 states would have a seal of bi-
20 literacy. I would think those states would
21 want to begin assessing in the native

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1 language if that's part of their long-term
2 plan. That's up to the state to provide.
3 They should be required to talk about their
4 long-term plan in reporting their need for
5 assessments in the native language. So
6 taking all of these factors into account the
7 regulation should really be about how states
8 report what languages they need in the
9 context of what their language context is and
10 what the needs of their learners are. They
11 should be required to report on all of these
12 categories and not report the data to the
13 Department and say here you decide what to do
14 with it. Here is what we want to do with it,
15 and here's why we made the decisions that we
16 made and you have context for the federal
17 government for making their judgements about
18 where languages are needed. Finally, I think
19 it's important that we beyond tightening up
20 reporting and I don't know the practicality,
21 not the practicalities or the operations on

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how this works. I believe in regulation.
You could call for further study perhaps of a
commission or someone to look at the use of
native language and to look at this law and
the requirement from a more research based
perspective and also to do a better job of
taking a wider view of the entire country and
where we are going and what states are doing
and what the latest developments are and that
sort of thing. I think it would be a very
useful thing and perhaps that could be part
of guidance, and I would prefer it to be part
of the regulation. We tighten up what's
reported from the states and provide the
categories including grade span and what the
instruction are, and what the plans are of
the state in the native language. And what
their justification for why they do or don't
use the native language and further that
there be some sort of body established by the
federal government to be begin to look at the
use of native language assessments and looking at the research and practice.

Ms. Harper: I think Aaron gave a really good description of the status of native American's in this country, really quick very concise overview of what has brought us to where we are today as the sovereign nations of this country. The very complex constituencies and monitor agencies that we negotiate as tribal members as Native American members of this country. So again I am going to go back and ask that to frame up this discussion on English learners we describe all the categories and that we consider all the categories of EL's that are in the law as we go through this and reflect on what the secretary said yesterday, yesterday I can't even tell what day it is, two days ago. You know that at the heart of it this is a civil rights law that we are talking about and we are looking for equity
and civil rights in this. Section 8-- definitions of English learners carried through here says the term English learner would use with respect to an individual meanings, A, someone age 3-21 B, who is enrolled or preparing to enroll in an elementary school or secondary school, C, one who is not born in the United States or who's native language is a language other than English, who is a native American or a Alaska native or a native resident of the outlying areas and who comes from an environment from a language other than English, has had an impact on the individuals language proficiency or three who is migratory who's native language is a language other than English, and who comes from an environment where a language other than English is dominant. You know I mean we have to talk about what these are and we have to understand that there are several categories.
of EL's that we are talking about here. So that's going to frame up, you know, the beginning of our discussion here, and I hope that we are able to move forward and talk about this. We have distinctive definitions of EL's in here for our Native American student's and for our native Hawaiian student and for our Alaska natives, and we must consider that in the context of education in many of our sites.

Mr. Hager: Thank you for that Leslie. I am going to go back on the comments. I appreciate your comments though the first one is the legal question, and I do understand how we make every effort there's a qualifier there. However, if you look at the actual law in a state you know what's the difference between assessing languages other than English and instructing in other, in a language other than English so that when you are determining, you know, is there a
1 conflict or is there not the formal rule is
2 the federal law supersedes and you are taking
3 this money, lots of money so you need to
4 comply with the law so that there should be a
5 strict construct? I guess, strict
6 construction approach to there or is there
7 not a conflict? I think with some laws it
8 may be written in such a way that you are
9 stuck and there is in fact a conflict and
10 make every effort if it's against the law,
11 it's against the law. In other states there
12 might be room to the law. Your rule only
13 applies to this not that. In terms of
14 looking at how states define and I think it's
15 an important distinction to make reporting
16 not only reporting for English learners, but
17 also English learners with disabilities.
18 There's really a death of information only
19 four states reported participation and EL's
20 with disabilities on general assessments only
21 18 on EL's with disabilities for the
alternate assessment and alternate academic standards. In terms of the data requirement definitely make sure we include the English learners with disabilities.

Ms. Rigling: I want to respond to Mr. Hager's comments. We are not in any way interpreting state law here. I just wanted to point out that the federal law does not demand native languages. It certainly strongly encourages that, but it does not require that there be a native language assessment. I think to the extent that we just need to keep in mind that there is in this area in particular a lot of new answers in terms of what the federal law requires and what the conflicts there might be with state laws, but I don't want in any way to chill any discussion because I think it's very clear that the law is encouraging native language assessing these students in the valid and reliable manner and that is in the
law. What we have to do is figure out how we can do that in some context. It might be native language context. It might be appropriate accommodations that are currently being required. That's sort of what we need to do here today.

Ms. Ricker: Thank you. I have a question and then an offer for an answer to the question or to the question you posed.

My first question is how many states requested assistance to develop native language assessments up to this point and then what generally what are the outcomes of some of those assistance or that assistance?

Mr. Rooney: I can try to answer that. I will have to check on the first part. I don't know that any states requested assistance from the Department on providing native language translation assessments. I will say that related to this the Department provides funding to all states as formula
funds that go to states every year and in
order to help them develop and administer
their assessments so there is finance
provided for the development of their
assessments. I don't know if we provide any
technical assistance native translations of
assessments.

Ms. Ricker: A follow up question
thinking in particularly in states that maybe
hostile to world languages. Is it permissive
for a district to go around a state to ask
for assistance?

In our laws to have a state
assessment system, and so I mean the question
would be with the district be going around
this for assistance in administering or
implementing the state assessment or would it
be asking for assistance with respect to some
sort of local assessment requirement?

Ms. Ricker: They would be asking for
assistance at the local level?
Again, I think the requirement is on a state assessment system.

Ms. Ricker: That's helpful. I would add to Leslie's point I actually thought her comments were very germane to the question you have. What do the states do to meet the requirement to meet every effort? I would want to put a fine point in adding to that in saying that I would expect the state that would have to separate out it's demonstration of every effort into include all exclusively to address all the categories and to make sure there's specific addressing of every effort to an indigenous language and every effort of native languages in that state. I would further answer that question by asking the state. This is a different approach to the same question of making every effort and that is asking a state to address any hardships or barriers. The state believes it has and I believe that different way of
Mr. Chau: I just wanted to piggy back off of what mentioned before about having guidance for state plans on what data to report. I would encourage us to maybe not necessarily over regulate what has to go in those plans because our states are very different as well. I wouldn't want any of the expected reporting requirements to unnecessarily impact districts within a state as well. For example, LA unified alone has more English learners than all but four states on this list. Let me say that that's pretty significant. We have more English learners in our district alone than all but four states on this chart. That being said you know to expect the state of California to respond in a very kind of restrictive way in
any sort of plan might not actually meet the
needs of all the local districts either. I
courage us to think through that mainly
because we know immigrant community,
immigrants may also be concentrated in
specific communities and neighborhoods and so
for example when you look at the list of
reassessments for California there are two
specific languages that are not present there
that would be impacted here in the Los
Angeles city specifically Korean and Armenian
which are significant populations in our
community. Many of us come to our country
and are educated so it might make sense for
those newcomers to be assessed in their
native language. We also have very, we have
other immigrants who come to our city and
come with very little formal education from a
native group in central and South America
speaking languages like Quechua and others
and where assessments might not make a lot of

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sense. I just want to put that out there and say that I appreciate the need for states to provide data on the immigrant populations, but also to allow states the flexibility to report out on specific districts in their states as well and leave flexibility. I know that looking at some of these other states like Michigan and others where I am aware there's immigrant communities that are concentrated in specific areas that we need that flexibility in the plans for states to provide justification where they might offer some assessments in the native language and not in others.

Ms. Evangelista: A couple of things. I think we are talking about two slightly different things. We are talking about native language assessments and native language translation’s which tend to be very different for students and translate. Coming from New York where I think they have been
1 quite at the forefront for a lot of this work
2 we do provide translations for students.
3 They are not always one hundred percent
4 correct or accurate but I have seen at our
5 school a lot of schools like ours that serve
6 newcomers and many of them interrupted
7 education, unaccompanied minors that the
8 translations have been tremendously
9 beneficial for our students. It doesn't mean
10 that the students have to take it in their
11 native language. Students and parents are
12 given that choice. I think as Kenji eluded
13 to it's there, there's when you are talking
14 about three to eight years when you are
15 coming in already, already literate in your
16 language to develop language. It's not
17 something that's the same for every student,
18 and we have seen student who is develop
19 language very quickly who it takes longer
20 depending on lots of things. Are they here
21 at home and working and so many other factors

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that are factored in for students? Those, the option to have that side-by-side translation for students for some of them it's wonderful because remember that any test that we are looking at is an English reading comprehension test first. If you are looking at a science test or math test you need to understand what the question is? Asking it's -- a lot of us haven't taken a science test probably since high school. I can sit down and take the high school right now and do okay on it because I know how to look at a question and figure out what it's asking me and that accommodation for student’s is at least helping them with the directions and to figure out what the question is asking.

Again, for students who aren't fully literate in their language it's not always helpful, but the choice should be there's and their families whether to have that accommodation or not. To have not it there I think the
test is invalid. You are not saying what the student knows. The last thing is this idea of significant extent it was really helpful for me to see this information because we are given the languages and we are given the test in five languages to provide for students. When I looked at the data here I could see two of our major languages which are Arabic and Bengali we don't have for students. That has been a consistent issue in our schools that I am handing out you know the Spanish and the mandarin translations, and the very few Korean students or the very few Russian students that I might have. I have huge populations of Arabic and Bengali students that don't have that side by side translation and to be able to look at that data and say that look whatever we say is the top languages in your state should be at least represented or we do have the option for students can respond in their native

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language, and someone will grade it for them if that's a choice. That's different than having the questions there or the option to understand what the question is asking in the native language.

Mr. Payment: Okay I have a couple of points I want to make. First of all I appreciate you hitting the issue of validity because we had a primer on our first day on research and statistics and validity reliability and fairness. So if we aren't applying those standards we are expecting students to demonstrate their performance through an invalid tool. I think that's key and I think that's very key and we always have to come back to that. If you have a bias that doesn't understand that then you need to recognize that. So I also would do my ancestors in the future generations, I would be remiss if I didn't, so one of the sayings that we hear all the time that we
just American Indians find just so such a conundrum is you are an America now boy,
speak English. It's like well, okay we get left out of argument quite a bit, but the issue is it's same as the immigrants. The expectation that we have to conform to a certain style or in order to fully participate American's. We were here before English was here so that expectation is unrealistic. The conundrum of us being here first and being subjected to all of the processes to strip us of our culture and language and our accessibility based on adaptations of that is an interesting thing. I will take that hat off for a second and I will put the accountability hat on. I am looking at this list of those states that have assessments offered in native language. It was a language that we read through the law and where Leslie read through where the native language Native American language. We
use it so frequently now because it's in the law: We forget the Native American portion in the native language is left out. If you look on this list this list suggests that when you asked for in 1991 is something that's critically needed today. So I think if we are going to do a service to our population moving forward we need to get that. That's very different. I know state sovereignty and all of that it's very different than mandating something. I think we need a score card or baseline that can suggest what we are actually doing now and that might lead to best practices. Who knows states will see that other states are doing it and it's not so painful or horrible or un-American maybe we can do it. I do think that if it's in the guidance or regulations then I prefer the regulations which is to compel the data collection of states that do accommodations and assessments and in their
native languages. I think there was one last point. So all right, so understanding state sovereignty because the provision for sovereignty for states is the same as it is for American Indian tribes. In subparagraph three sovereignty for states and foreign nations and Indian tribes our sovereignty comes from the same origin. Maybe there is a provision for us to assert ourselves as a tribal nation. The federal government is our trustee they may have to take a backseat -- I think that maybe we have been a little too lax in saying that this is what we like for you to do whether you take the funds or whether you do it or not is up to you. I think maybe you shouldn't get those funds. I also pay taxes if you are not following law you should not get those tax dollars right? Maybe if we took an assertive role there maybe states would come along. I think states are more likely to come along if we
help them come along. It's one thing to expect states to do things. It's another to show them the utility of doing it. I think maybe education the Department of education can be facilitative in that part as well.

Thanks.

Ms. Pin Ahrens: I want to follow up on something that Kay had said that difference should be given to states as English states. The state is making every effort. I want to make sure that's correct in terms of what was said. I want to remind folks here that we are regulating ESSA, but these regulations have to be compliant and aligned with other federal regulations. So think about our conversation when we were talking about accommodations for students with disabilities. We also refer to section 504, so I want to remind folks that one of the regulations we need to consider or I'm sorry one of the laws we need to consider is
that title six of the civil rights act of 1964. Last year the Department of education and the Department of justice jointly released guidance that I thought was phenomenal. I am going to refer to it in terms of what the students and parents are entitled to. In the fact sheet from Ed's website. It says English learner students are entitled to English learner programs with sufficient resources to ensure the programs are effectively implemented including highly qualified teachers, support staff and appropriate instructional materials. School districts must have qualified EL teachers, staff administrators to implement their EL program and must provide supplemental training when necessary, and so this is just a small portion. My point here is that this is a requirement that we must that the states and the districts must supply sufficient resources to effectively implement these.

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programs. So when we are thinking about validity and reliability of assessments we have to ask the states to demonstrate that they are supplying sufficient resources to implement this law so that it also complies with title six. I know that there are a number of language access places that are you know filed with office of civil rights every year. A lot of these have to do with basic compliance with the law such as parents not receiving translators for their IEP meetings. I think historically there's been exclusion of EL's and this really needs to be addressed in the regulations, and there has to be very strong demonstration, but the states are doing what they are doing what they are legally required to do. It's not a question of are they making enough effort? Are they actually complying with the federal law for title six? They are required to effectively implement and to supply adequate resources.
I want to note that you know there has been litigation over this we know in the case law versus Nichols non English Chinese students sought relief against San Francisco school district claiming they should be taught the English language instruction. Should we proceed in Chinese or should we provide to afford them equal education opportunity? The Supreme Court found that the San Francisco English only education violated title six of the civil rights act of 1964. There's been other similar cases that have been filed on the equal educational opportunities act of 1974. I am not going to go into all of them because this would be a lengthy conversation. We need to remember as -- king reminded us that ESEA is a civil rights law and that this is a civil rights provision in the civil rights law and that these regulations have to be in line not only with ESEA and with title six and the equal education opportunities
Mr. Evers: This is nearly a great distress. This is probably the most important issue that we face that I think in the last three days. There's a history in Wisconsin around this. There was pressure put on, there's certainly pressure put on there and second generation Germans state pushed having English taught in schools and there were civil disputes all across the state of Wisconsin. They just ignored that and kept teaching English, teaching for decades. I say that to assure people that everything that has been talked about is a realistic expectation of states. I think this is an area and this is a permissive part of the law or a permissive part of the law as was stated and there's no explicit authority for us to recognize to regulate this to my knowledge. I could be wrong. If we have packaged these things into guidance and
guidelines and I just think that this is a, I
won't say over reach. Everything that's said
should be done. Everything that's been said
should be done. I just believe that we have
to find a way to make sure that we are
following the law, and the law doesn't give
us the authority in this area. In turn or in
addition the Department under this ESSEA is
innovative a-- they are enshrined to provide
grants for states like new Hampshire that are
looking at new ways to assess children that's
good. I can't think of any other better use
of that fund than to use it for that. We are
talking about providing an appropriate
assessment for children is expensive. We
need federal government's not only technical
assistance around this area. I think we have
pretty good technical assistance in our
states. We need resources and I think that
we need a partnership with the federal
government to make this happen.

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Ms. Rigling: I just wanted to follow up on the point about whether there's specific authority to regulate. I think there is. This is sort of what I touched on the first day that we can't regulate on something that's inconsistent with the statute or outside the scope. We don't need the statute to specifically say you must regulate on this particular topic in order for us to be able to regulate. I mean that's why we are here. We are here to regulate or consider regulations on things that are either unclear in the statute or where additional regulatory language would be very helpful in order to clarify the statute or further the purpose or intent of the statute. I don't want us to think and I apologize if I said something that would chill the conversation in this area because I think there are things in statute that we certainly could regulate onto clarify, explain, promote.
further the ability of English learners and indigenous populations who's native language is not English to be able to participate in the assessment systems of the states in a way that is valid and reliable and enables those students to be able to show what they know and can do. That's really what we are here. We are here to figure out are there ways that the federal government's regulations could do this in a way that's consistent with the statute?

Ms. Podziba: There's a lot of tents up. I suggest we go for five minutes. At a quarter of I think it's fair to give everyone a chance to stretch.

Ms. Pompa: I was going to ask if we had moved to the next question because others have addressed it if that's case I would like to address it. When were you planning to come back to it officially?

Mr. Rooney: You mean the second part
of the first bullet? So I am fine with the
second question if people had comments about
the first part that we get to hear all of
that.

Ms. Podziba: It's just others have
gone into it. I would say let's include it
many people have. Just a little bit harder
for you to sift through I think we are there
anyway. Thanks.

Ms. Pompa: In that case I think

it's the very squishy notion to be able to
say what to a significant extent is. I do
thank Kay for your statement right now. I
think there's regulation that might help
clarify this and in the regulation I would
not recommend that we set a number or mandate
a cut off that we provide language that tells
states the kinds of things that they should
look at to determine if their languages are
present to a significant extent which would

include the number of languages spoken per
grade level. The fact whether there are sufficient numbers of a language per grade level that can be so that the assessments can be validated to accepted psychometric practices that could be another thing that you could look at and the language of instruction. Those are just some ideas and there's others I think, but I do think providing clarification to states would help them to determine what a significant extent, but no cut off for the federal government or not a significant number.

Ms. Goings: As I look at this question it brings to mind a slowly, but increasing subpopulation of students that I struggle with as a speech language pathologists and my staff who try to assess these students and that's the population of cochlear implanted students who are just hearing for the first time and some of them are implanted at the middle school and high school.
school level, so they are leaving a culture of not hearing to a culture of hearing. And then if we don't have a whammy on that many of them are English learners so it's a real struggle for them as we consider this regulation. Let's consider all students and particularly with this specific disability.

Ms. Podziba: Thank you. Okay let's take a break and reconvene at 11.

Ms. Podziba: Okay. All negotiators here we will just give you another minute. Okay. We are going to pick up where we left off and Marcus you were next up.

Mr. Cheeks: Thank you Susan. I wanted to bring to light from the standpoint of a small state the importance of the cultural aspect of this question and I think you mentioned the aspect of a setting that would yield additional supports that could be passed back to states. I think that will be something definitely warranted and necessary,
and a lot of places where some of the EL students are in such small numbers and people don't know what to do when those children show up, and they are speaking a different language. As much as we have done I think in terms of sharing supports we are finding pockets of places where people just don't know what to do. I think the awareness piece in terms of the Department really delving into particularly from my planning standpoint. What are states doing that will help us get to the point of every effort I think the every effort has to go beyond something that you are saying, yes, I am making my valued effort something should be reported and something should be documented to show what the effort looks like. At the same time the cultural piece is where people just don't know how to respond in as much as title six laws are in place that law constitutes compliance all the time. People
1 just don't know even the absence of the law.
2 They don't know those things are required.
3 What we found I think is that really gets a
4 better product is when people understand the
5 rational and understand supports that are
6 available and understand the necessity of
7 providing necessary components to the EL
8 students. We have found success in trying to
9 look at academic language beyond just EL
10 students because what we are finding and I
11 was glad to hear Regina mentioned hearing-
12 impaired students. Because of culture you
13 end up with certain sets of children that do
14 not understand academic language we found
15 that is being used with EL students, and they
16 also support the very same things with
17 African-American students because of the
18 cultural void and the academic language and
19 in the absence of understanding academic
20 language particularly in their homes. I
21 would bring that aspect to light as we are

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1 trying to make the decision about defining or
2 trying to understand how to codify the every
3 effort that a state is making.
4 Mr. Wilbanks: Just to follow up on
5 what Tony and some extent to some extent
6 mentioned as we think about this challenge I
7 think it's something we all note and perhaps
8 would need to be done. Some of the things
9 that we are talking about does cost money. I
10 hate to inject budgets into this. As I look
11 at it I just flipped to the federal budget
12 they aren't flush with money. I don't
13 believe the DOE is flush with money. I asked
14 Tom if his state had more than he needed and
15 he could send us some. I don't believe he
16 has more than he needs nor does most states
17 and districts in this nation. Think about
18 how these things get implemented. I am a
19 practitioner that's where I reside and that's
20 where I think, but most I won't say most, but
21 many I try to keep up with some of these

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things but most school districts in the nation are going through some severe budget challenges. When we put into regulatory language that we have to do something that bells go off and the dollars tally up. I know it would be good to say well you know we can't keep it's -- back as a reason not to do it. I also think that we have to be realistic and maybe here's an area for us to put some language in the guidance section rather than regulatory in helping states determine how they can do some of this and maybe do it better or cheaper or whatever. I do know that it's a great challenge. I certainly wish we could do it. It would be nice if we could do it, great, we will go home and start going it. Not only does it get played out in physical resources it gets played out on human resources. I think Marcus eluded to that. If we had some Arabic translated assessments we probably have some
students that will be able to have a higher grade. I just want to caution us as we are here to develop regulation, but it also is regulatory as well as guidance that may be some of this we focus more on the guidance side than on the regulatory session, but really already says unless we think we can at the federal level make a mandate and it gets done without any money. I don't think that will necessarily happen as just for a little bit of realistic thinking on a couple of these things. I suggest we move more toward the guidance section than regulatory.

Mr. Hager: Thank you. A couple of comments starting with Tony, and I think also maybe Alvin's comments as well, and in the case in terms of you know guidance versus regulation and you know is this an area that we should be or couldn't be regulating. The whole reason why we are here is because the statute itself says if the Department wants
to regulate it in this area they need to do
the negotiated regulated or whatever it's
called anything regular. I don't know what
it stands for any more. All of these things
are appropriate for regulation. The other
point is especially in terms of the language
and the statute about the, you know, make
every effort it's discretionary in a sense
but it's not totally discretionary. Make
every effort means you have to make an
effort. It doesn't mean you can do whatever
you want or ignore it. That's a statutory
requirement so if the money is there whether
it's enough money is another question. If
you want this money these are the things you
have to do to comply with the statute. Then
the question, the next question then is to
what extent are the phrases in the statute
will it be helpful to clarify that language
in some ways or not? So that's really where
we are now is this something that we could
benefit from getting clarification? It wouldn't be violating the statute to do that and definitely the more things that can go into the regulation versus guidance I think the better.

Ms. Podziba: With the permission of the group I would like to take the five comments that are people who currently have their cards up and then ask Patrick to move us to the second question on this issue. I believe the Department has heard quite a bit on the first one, and I assume has enough to go on in order to develop some regulatory text. Let's hear these five questions or these five comments before we go to the second question. Liz you are next.

Ms. King: Thanks so to Tony's earlier point about the authority to regulate and re-enforcing what Ron said. It does say in the statute that should the Department choose to regulate, which implies they have
the authority given they have the author under other law there is specific prohibitions around the Department's ability to regulate those are narrow prohibitions. It's a legal authority. The concept of negotiated rule making and the Department like we all had to request for information, and we all filed comments that's how we got to be here and then they decided of the things in 111 (b)(2) this is what they wanted to talk about regulating on. That's why we are here talking about these things. I will say what is in the negotiated rule making process is very similar to what happened which is some of us are going to advocate a lot for regulation because of the additional legal protection it's going to provide. Some folks are more inclined to do their jobs well without the need for regulation. I think we are sort of where we were expected to be in that system other than the one regulation

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1 that Tony got super excited about yesterday.
2 (laughter)
3 Mr. Evers: There's going to be
4 another one coming up.
5 Ms. King: Can't wait. To sort of
6 step back on the subject I think Alvin
7 framing about limited funds is a great
8 framing. It does call us to ask what is most
9 important. We have limited dollars what do
10 we spend them on. I think thinking about
11 native language assessment in the context of
12 accommodations access and inclusion and
13 making sure that all students have the
14 opportunity to access the content and are
15 appropriately assessed so we can make sure
16 the system is working for all students. I
17 think it's always useful to remind us that we
18 need to be very intentional and thoughtful
19 about our requirements, and make sure that
20 the requirements that we have that the
21 decisions that we made are consistent with

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the values that Thomas pointed out to make sure all of our kids have the opportunity to be successful. I wanted to thank you for that framing. To put a plug I think a lot of supported common assessments across states specifically for one of the reasons we supported that is the efficiency that it provides and the opportunity to provide a lot more native language assessments because you have a lot larger student population who has access to them so each individual state isn't on the hook for financing their own native language assessment. Sort of to thank Marcus for his flag about -- and think of this as another opportunity to plug those best practices. Sorry I talk to fast. (laughter) thinking about universal design for learning may have been learned to serve one group of students to inform the best way to provide instruction for all groups of students, and we do certainly want to protected those
services which are dedicated for English learners on the basis of their English learner status. We want to absolutely make sure that all children are benefitting from the best practices that you know. I mean there's leading educators across all different fielding here and we should make sure that expertise that educators informing all instruction for all children.

Ms. Podziba: I would like to offer a friendly amendment to the reg neg comment. We are expected where we expected to be on day three meeting one. The expectation all of you will see it in your interest to bring your concerns closer aligned to each other because of the benefit of being able to actually impact what the rule says rather than having the Department go off on its own and determining what it will say. Just a friendly amendment

Ms. King: Just to respond to that
amendment. I think hopefully not necessary.
I do really do believe that we can find
consensus on all of these issues. I trust
everybody's motivation in this room and that
we were all brought together because of the
different perspectives that we all offer and
a recognition that whatever happens in
implementation needs to be grounded in the
context that we are all coming from.
Absolutely I hope it didn't feel that was
necessary but that is certainly my intention.

Ms. Podziba: Thank you.
Ms. Harper: I was just going to some
question and comment about regulation and
regulatory language or guidance, and I would
say that this section what we are talking
about here already is providing regulations
and is already giving that our students in
Puerto Rico are exempted from English medium
assessments of content and that was in the
previous law and that has carried forward

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into this. It's in our packet of materials and it's in all of our areas where we are referring. So students in Puerto Rico are exempted from English medium assessment content they are strictly given in Spanish.

We have other titles within the broader space of ESSA that support native American language rights and our rights to describe programs of instruction and curriculum and assessment and evaluation, and were named align side of Puerto Rico but that right gets trumped by the one state, one test, one, you know, one language rule. What we are talking about is we want to align Native American language rights with those of Puerto Rico under the assessments here. This is already they are exempted there is specific language in here. We are talking about being able to talk about regulations. This is what's happening here. It's not all just guidance. We do have the authority to do that and are being asked to
Ms. Ricker: Thank you. First, I wanted to just comment that I agree with what was said before the break on the idea of having states define significant extent. And in part of that I do believe we talked a little bit about how significant extent and demonstrating making every effort as a nice check and balance for each other. I would ask them to provide guidance for states to consider not just the number or concentration of English language learners, but recognition in the law of English language learners, definitions so Native American students and Hawaii Pacific islander students as well. We provide that guidance to states as they define significant extent they consider other recognized English learners already in statutes in other places.

Ms. Pompa: Can I respond to that?

I said states should define with guidance
from the federal government on the categories
they should look at what to define.

Mr. Ahart: In terms of what the
states are required to report would be
fantastic if that could be aligned with
what's already required under other titles,
title six for example. It's not implicative
and possibly contradictory requests for
sharing information and that we take
advantage of what's already in code and under
other titles. I wanted to speak a bit about
what Marcus and Alvin both referred to at the
local and the state level. I think it's
important to recognize from a fiscal
perspective and other resource perspective as
states' ability to support districts in
carrying out whatever is in code. Mr. Chau
referred the huge percentage of the EL's
that LA has in the state of California.

However, there's many large districts in
California with very large populations and
smaller states such as Iowa, but certainly not exclusive to Iowa with a real drop in support at the state level and the federal level for supporting refugees in particular. Refugees are tending to land in our urban areas in smaller states that population can be very diverse and very concentrated, but not rise to the level of the state to meet. I look across the support materials here and you would think there's only one, second language in Iowa, and I have over a hundred languages and students from 88 countries of birth. The state Department really only has my district to consider on most of these issues, and therefore is not particularly compelled to be equipped to support us effectively. I would imagine that Marcus has a challenge similar to that in Mississippi and there's states all over this country that have that issue. A lot of what we are talking about here frankly would skate right
over and not effect very meaningful way a lot
of the students in a lot of states. I just
it just wanted to lift up that it's really
important that whatever is put into regs we
keep in mind Derrick context, and my context
and Marcus'. There's a huge array of
situations that's very difficult to prep regs
even if they are met are going to make a
positive impact on how we are able to serve
our students. So I know we are all
interested in the best interest of all of our
students. However, trying to protect our
student’s rights has to happen in the context
of providing appropriate resources and
context as we work those regs.

Ms. Pin Ahrens: I wanted to respond
to those comments from Alvin and Thomas about
money and the resources, and while I
appreciate that in places like California
with large populations or small places with
emergent populations that cause a new
additional need and demand for resources,

it's not always about a lack of resources

sometimes it's just a pure lack of will to

comply at the district or state level. I

will give you one example. I went on a tour

with some of my civil rights friends to an

award winning school in California. The

principal proudly showed us the new

facilities beautiful athletic facilities and

talked about the extensive after school

programs and music and technology it sounded

fabulous. I was particularly pleased to see

that she had a student handbook that talked

about everything a student needed to know to

succeed at that high school and to get into

college. It talked about scholarship and

course introductory and then I asked a simple

question. I said, do you translate this into

Spanish? I am an advocate for the Asian

Pacific islanders and I wanted to know do you

translate it into just one language? Her
answer was no. Looking at the statistics at your school since I'm a former math teacher that's 255 students alone that are English language learners that are not getting to the handbook that according to DOJ guidebook it should be given in their language, and it should be given to every other language. I asked do you intend to translate this next year now that I flagged it as a problem as a civil rights advocate. She said no. I don't think we can. I looked at you in California you have access to translators. What is the cost? It can't cost more than upgrading your football and your track? This is discretionary spending that you have put money into so you are fine with expanding after school and athletics and other resources and you are not prioritizing your English language learners and you are winning an award, but you are not complying with the law in a very basic way. So I will say you
1 know I am glad there are places that are
2 trying to do the right thing, but what I am
3 concerned and what is ESSA is making sure
4 there's compliance for those places that
5 refuse to do the right thing, so you know we
6 have to provide guidance for this purpose and
7 we have the authority to do it. So one of
8 the things I would like to recommend since we
9 are looking for solutions is that if a state
10 believes they cannot provide appropriate
11 accommodations let's have some reporting on
12 their fiscal and non-fiscal barriers. I want
13 insight into what is happening at the LEA and
14 at the state level in terms of their non-
15 committed discretionary spending. Where is
16 that uncommitted money going because maybe
17 that's the money that should be going into a
18 few translations here and there that would
19 provide impact right? So let's look at those
20 priorities. The second thing I want to
21 recommend you know in relation to this

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question of the determining languages where
assessments in native language is needed I
want us to think about and acknowledge that
test development takes time. I appreciate
the data that shows where the EL students are
when we look at certain thresholds and you
use certain numbers. We shouldn't be looking
at the status of current students in the
system because we are not going to develop
the native language assessments in time for
them. We should be projecting what the
language needs are. I would recommend that
any methodology the state uses needs to use
census figures which is more consistent
across the U.S. than the numbers that you
know are provided through analysis of NCS
data and some state variation for
identification of EL's, so to get a more
accurate number let's use those census
categories or that census methodology of
identification through the home language

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survey. I believe the national academy of sciences actually studied this in 2011 as to whether census methodology and accounts were accurate and could predict, and were comparable to the states counts, and there was finding that census or methodology could be utilized to a degree or accuracy and consistency. And I think on that point they recommended the use of the three year community surveys over the one year community surveys, and then I also want to ask that states incorporate, look at some of the changes in educational outcomes at the state level which might flag some of those emerging populations that are appearing in concentrated areas in districts so that we can take care of those issues in smaller states.

Ms. Podziba: Patrick, I am going to ask you to read out the second question.

Mr. Rooney: Thank you. We have a
lot of good comments on this issue paper in
general. I will read the second question I
think Rita and a lot of comments so far have
addressed the question already, so I think we
have a lot that we can take back and think
about what that might mean if we were to try
to think about this in regulations, so if
people have other things we wanted to add to
that. I think we have a lot of feedback.
The question is how does the need to ensure
all English learners are assessed in the
language formed most likely to accurate data
in potential challenges in states that may
face languages other than English?
Mr. Evers: This is a general
comment. I express authority. Regulations
do need to clarify congressional intent.
It's not to make new policy and so here
Congress has looked at this issue and chose
not to require any triggers or so on and so
forth. As we develop this large list of

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regulations, I want to make sure that they
are used to clarify congressional intent.

Ms. James: I just have been just
sitting back listening and I immediately
started thinking about the staff in my
building. I started to wonder how my staff
will ensure that we are teaching the content
in a way where all students can obviously
access it. And then what will teachers do if
all of our students have not all but our EL's
are able to receive an assessment, and in a
different language that they are not able to
translate themselves. What does that mean
for professional development? What does it
mean for data driven instruction? Then if
the instruction is in the English language
how do we ensure that tests and or
assessments are valid and or reliable
consideration the process that we took to
assess the content is not in the same tone or
the frame as it was taught. So then the

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other factor that I think about with regard
to assessments for our EL's are the need to
begin to think about guidance associated with
perhaps accommodations for our EL's and so
specifically when I think about a student who
has the ability to have resources next to
them and they are utilizing the resources
during their assessment IE, a dictionary and
maybe even another person their first looking
at this assessment in the English language
and then taking the time to translate in
their native language using the resources,
then responding to the question in their
native language and then taking the time to
translate back into English. The questions
that I have the two things that I really want
to point out really does make me wonder about
the staffing portion which buckets into the
area of resources. I completely understand
what it means to think about money and I also
understand what a scale looks like. If you

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are given a hundred whatever it is or a
hundred pennies or whatever you have there it
doesn't matter to me the unit of measurement.
My point is you are only given a hundred.
Something else is going to compromise. If we
are saying to ourselves amongst each other
that we are willing for something else to
compromise. We are going to have another
discussion years to come about how to fix
that. So I really would encourage us to be
very thoughtful and in regards of are we
going to regulate something or are we going
to offer additional guidance then perhaps
have accountabilities at the state level that
ensure equity. The other question or comment
that I made really goes back to a statement I
made yesterday Kenji regarding accommodations
for newcomers not just newcomers, but for all
EL's which is something I would really like
to have a response to.

Mr. Rooney: Do you want to clarify
that question if you are looking for Kenji to
response?

Ms. James: Yesterday I asked about a
question for newcomers when we talk about
state given assessments I am thinking deeply
about what's necessary in order to capture
what students have learned and or mastered or
even before they learned it in America what
they bring to the table?

Mr. Hakuta: Thank you for bringing
that back up. I think you know again, the
assessment through the native language is a
form of accommodations. It is and it is
appropriate that as we said for students who
are either have received or have a history of
receiving instruction in that language or if
the assessment is used for other purposes
such as for just understanding where they are
coming from and what their background is for
having that available I think is really
important. Then there are accommodation

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practices that make both universal as well as
targeted that could help students more avidly
express their knowledge of the area being
assessed and that could involve anything from
you know glossaries that are available up
front insurances and this sort of in a sense
this isn't an accommodation, but it is
universally available but making sure that
the items avoid unnecessary language demands
that are not construct relevant, so
additional time and availability of
instruction through the native language and
so forth. What we do know is that there are
some of those practices that are helpful but
for students who are new arrivals that are
coming with essentially no English there's
nothing other than a native language
assessment that it's again you know validated
and appropriate for those students and so
that doesn't just need a simple translation
through Google translate of that test that's

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made available. You know basically so I think there are practically speaking there's going to be students whom there is nothing available because the language isn't represented sufficiently in numbers. No amount of added accommodation in English in the practices and mostly helping students who are sort of that some intermediate advanced level of proficiency in English would be helpful. I am afraid that there are always going to be some number of students and maybe a lot of students for whom accommodation either through adaptation of English or through native language versions of the assessment would not be available.

I appreciate you saying that.

Ms. Jackson: I appreciate you naming that you heard a lot on this already. I will try to keep this brief. We are talking about a really complex but growing group of students are right now classified under one.
general term. We had people speak to the variation of what that term means. I want to stress that I don't think there's any advantage or great benefit to giving a blanket set of accommodations for all EL's and that it really just as 504 plans an IEP's need to take into account that an individual child's needs, history and the tricky part with that is you don't want it to then be on an individual basis be more influenced by what's available at the school or what's being done at the school but what is best practices. That's something that we will have to try to navigate. It really you know one child, one el in one classroom or even two in the same classroom they have different profiles and needs. What's being done in terms of accommodation should translate to the testing environment. That's tricky navigating that you don't want the cart before the horse. If the child is never
using dual language dictionary in the classroom just providing one on a testing day will not necessarily benefit the child or be a factor in their ability to show what they understand. Thank you.

Mr. Pohlman: I would like to sort of talk about the interaction between providing the state developed assessment languages other than English and accountability a little bit more. I am thinking that guidance or regulations also need to be clear and you guys have likely thought about this about both measuring proficiency but then also growth. Many of our state level accountability systems that are both of the state levels are people who are looking at growth as a measure, but we have authorizers and others using growth in innovative ways. I think what strikes me most about this conversation is that there's guilt because you have a horizontal growth. You have the
1 comparison amongst schools or students in
2 schools that maybe highly concentrated and
3 have no EL population and that same
4 assessment needs to be able to measure
5 proficiency between those students of the
6 same grade level. It also needs to be able
7 to measure the growth of proficiency between
8 grade levels for an el student who may
9 transition between taking the test with the
10 translator accommodation and then not taking
11 that test, and how do you measure that
12 student’s growth between those two
13 assessments year after year? I think that's
14 an important measure that for jurisdictions
15 that are small and have high levels of
16 students with that are speaking languages
17 this could have a dramatic effect on a state
18 level GP or state level formulas. I want the
19 folks at Ed to know I was thinking about
20 that, but to also consider that within any
21 regulation of guidance to states on how they

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should be thinking about integrating
translator accommodations.

Mr. Payment: I have a framing

comment and so addressing the question of
what challenges do the states face? So I
think one of the challenges is clarity and so
I am back and forth between because I'm an
administrator too because I know the
application in terms of what resources do you
have and what can you do practically with
what you have, but without the clarity. So I
am back and forth between guidance and
regulation without the clarity, then we are
going to default to all the other stuff that
happens back home including the politics and
the legislature and et cetera. Without
something strong I think too often we default
back. I just want to give a quick overview
of established law and where we are at right
now. So we are at right now is when the
constitution was written there was a
repudiation of the first approach in
education was puritan education. It was
religious education okay and in the schools
and in schools at that time the constitution
was written to repudiate that. There's
specific and I know this is the strict
constructionist and right wing like to say
why isn't you know all of these things being
honored in the constitution they were never
in the constitution. The constitution
prohibited those. So we don't have a
national right to an education per se except
for American Indian students because it's in
the treaties. In the 13th amendment to the
extent to anybody has a right to an education
and we have an equal right and that's the
13th amendment to the equal protection
clause. Then flash forward so I guess that
wasn't clear enough so then in 1964 we had to
pass a civil rights law. That is what we
meant by equal protections and this is what
happens, and then title one is established in order to provide for the equity aspect versus equality so that's a very simple concept that gets lost in this. So equal measures is inherently unequal depending on your American who you are as an American, and so equity measures are what title 7 and ESSA are all about. What can we do to make more equal through practice and through funding and resources so that everybody can learn so we have an equal right to an education? Without that we have a separate but equal doctrine which the 1964 civil rights act was intended to abolish and involve the society of past. Having said all of that I also know that states have all of the restraints and constrictions and funding and all the politics back home, and this part of the party saying this and this part of the party saying that. I think without clarity in the regulation I think and it may seem contrary

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to those who expressed themselves at this level that the reality and the funding sources, and you know you are getting basically an un-funded mandate in large part. I think this really supports what the practitioners at the state level are saying because without something strong you are going to be able to do the equity measures you are going to end up defaulting back to the minimal that you think that's adequate to do. So I guess I went through all of that to reinforce that. I think we need real strong language to make clear. I think we need to make it clear in guidance that the funding needs to flow to make sure it happens. If a state is making decisions not to do something that is equitable based on not having the resources I wonder about that too. Stop for a second. If all of these funds are intended to be undue the un-equities then what are they doing with the funds if it isn't to do
1 to arrest the inequities?
2 Mr. Hager: Thank you. I just wanted
3 to quickly bring back some of the
4 conversation from yesterday as applied to the
5 language and form. First of all Audrey's
6 point about all the things we talked about,
7 the exposure to the platform and exposure to
8 computers to ensure the format is
9 appropriate, getting accurate results and the
10 second one is the students that are English
11 language learners with disabilities may need
12 the double accommodations to meet both of
13 their EL and disability related needs. So
14 you are working on the form of the assessment
15 you need to be thinking about the
16 implications for students with a disability
17 who also are an English learner to
18 accommodate both perspectives.
19 Ms. Harper: We have the question the
20 need to ensure all EL's are assessed in a
21 language most likely to yield accurate data

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on their knowledge and abilities and how does that interact with the state, you know how do we describe that in here? And a little bit today I have got, I had a little bit of distraction this morning because at home our students in our language medium school our stem students who are learning all of their content in the Native language throughout their entire elementary years are at home and they said oh we are gathering the sap for the maple syrup. We have so much we don't have anywhere to put it. They are asking me I am in Washington DC in a cab in the city. I said you know put it in the pen and fire and uncle will be out to boil later and we will make do. It will get you more containers that's where I am at. My heart is at home in the woods and picking sap and being with these kids who are doing all of this in their Native language, Ojibwe language. We have so many barriers back home against us and our.
right to be able to provide a program of
instruction for our students. A lot of
barriers come through these ideas and
interpretations surrounding assessments which
we can't abstract and say, and assessment is
only if this over here is part of an entire
program of instruction that would necessarily
include pedagogy and we are -- and all of
these aspects and assessments. How in the
language of instruction, how many different
all of this stuff must be, you know,
conferred in our programs of instruction.
How do we consider all EL’s, and remember I
told you guys about that. The different
context in which our EL's and how do we make
this as least burdensome as possible? We
have ways to do this for our Native American
language medium students what we talk about
is that we want to align the other titles.
We want to align our rights within title
three and the Native American languages act

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with the assessment provision and this title one here. We want to be able to exempt our students from Native American, from English language medium assessments and be able to provide them through our Native American language mediums. It's not only our kids at home in Minnesota. We have kids in you know New Mexico, Arizona and Montana and Hawaii and Alaska and if we look back on these charts where they say oh you know here's some of the languages. Alaska has all of their native languages recognized as official languages of the state, and yet they are not allowed to test through any of their 21 native languages and you pick only one Alaska native language is listed in this chart. If we go to you know Arizona doesn't even mention Navajo language New Mexico does. If we go to Hawaii, Hawaii is the official language of Hawaii right next to it with English. Hawaiian language medium is not
mentioned in those statistics in Minnesota where all 11 federally recognized tribes has declared the native language of the nations. Our Native American languages are not mentioned in Minnesota. We have concern. Montana which has ten Native American tribes and languages, doesn't mention one. German. You know? Native American languages are not afforded considerations but we have specific rights in title three. We have section 3127 of American languages act which state programs for native programs and Puerto Rico and not withstanding any part of this provisions that under this part that serve native American including native American Pacific islander children and children in the Commonwealth of Puerto Rico may include programs of instruction, teacher training curriculum development and evaluation assessment designs for American children, and children of
limited Spanish language proficiency except the outcomes of these such children should be increased in English proficiency of such children. We have every right to determine our programs of instruction which necessarily contain assessments. However, we come back over to this states says one test one language. We would like the same exemption that Puerto Rico has received in their work books where they are described as limited Spanish proficient, so they are actually educated in the medium of Spanish language and their exempted from taking language arts tests in the medium of English. If we go to Puerto Rico's accountability workbook we can find that they actually end up studying English language arts as a content area, and their assessment is still, is still through Spanish medium. So they are exempted from having to take those English language arts assessments in the medium of English, and
they also tried to work on their math assessments in Puerto Rico on their translation attempts. They have been not very they didn't come off very well in their problems with the validity and reliability of the results that came out on their math assessments that were translated to Spanish if we are talking about what is the language and foremost likely to yield accurate data on their students. Recall that we have all of these different categories of students that must be considered in here and that as Native American language medium schools we have every right to consider that. We even have, we have been working at this for 10 and 20 and 30 years in our native language community's with Native American language schools. We have developed our own systems of assessment. We have not been given millions of dollars from any government form, so create these we did, this on our own and
we did this on our own urging and we have
developed our own assessments of student
academic achievement. We have done validity
and reliability checks on them we have got
this in place because we are good educators.
We are really good at what we do. We are
making a difference and we are really good at
understand that's an important part of a
program of educational instruction. We want
to know how we are doing for our communities
and how are we responding to our communities
and what we need to be able to develop our
nations much stronger. We have done this.
It's not been at a huge millions of dollar
cost. It has taken human resources but
that's our priority in our native language
need I didn't mean schools communities. We
have prioritized that and we have done that.
So you know we developed measurements of math
and reading and language arts in the language
of instruction in close to 17 states where
our enacted language medium schools are located and we have done all of the validity and reliability checks, and we reform after five years and we do all of this stuff and we have got it down. So we have ways to provide this to our Native American language medium schools. We would like to suggest that the rules should align the title three sections that grants us that civil right with this assessments protection. We want the same rights at Puerto Rico. We were before this country began doing this. We are discriminated against and we are not given this right. Yet, one other state like territory is given the right to do this to do this above and beyond what is in in the title one. We want to assert our right for Native American language schools in Native American language medium schools. We could also describe that our students would be exempted from English medium assessments until a
certain number of years after English language becomes the language of instruction for more than 50% of the time. You know so we would define our Native American medium schools as where schools content is taught in 50% or more of the day. There are some of our schools do not have the capacity to go through 12th grade they do a transfer out and they reduce the number of percentage of the day in which the content is taught in the native language. We do account for that as well in our schools and so when the school falls below 50% of the day taught through the medium of the native language then they are no longer a language medium school they are effective an English medium effective school and they should be subject to medium assessments because they are English medium students. What we are talking about is specific and rightful equitable consideration for our native language medium students in
this law. Let's make that kind of rule.

Thank you.

Ms. Pin Ahrens: I wanted to clarify in the assessment in providing more likely to yield accurate data. We have been focusing on assessments in our language that's what the issue papers have looked at. We have to remember and acknowledge other accommodations that maybe appropriate. Some of them are linguistic and they are not always translated and some of them are nonlinguistic. Some of these nonlinguistic accommodations could include extended time in addition to the use of glossaries or what was a side by side translation because research has shown that when you have glossaries or additional things that students have to refer to the accommodations not effective unless they are given that additional time. Other accommodations also include offering students the ability to demonstrate their knowledge in
different ways. I came across the phrase -- I'm not a researcher I don't understand what that means an example that I read about in computer adaptive test and other computer based testing, you know, there was the issue raised that students have to type in answers, but if they may be able to demonstrate their knowledge by not necessarily typing it in but showing diagrams or speaking it in their native language, and having those results inferred in another way. So I guess I am really wondering about I hear the questions about we don't necessarily have the expertise we need to train our teachers. What sort of technical assistance is currently available at the federal level because in the statute there's technical assistance? It sounds like that will be provided to states for this you know providing the linguistic accommodations in terms of developing tests in other languages.

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What about for all the other pieces of accommodations? I want to understand, you know, are we providing any sort of guidance to states and districts on these other forms of accommodations that they can utilize? Whether it's bilingual or telephonic services to provide interpreters and to read questions or instructions out loud and then the other question I have is you know if there is a TA available what's the utilization rate, you know, our states and districts seeking it out, but because it's not available you know they just don't have access or if it is available are they using it? I think this would be a good indicator as to whether we have and this is definitely out of the scope of this committee to ask for more appropriations for the Department of education to provide this sort of technical assistance. I think in terms of the regulations in what we have the authority to
cover you know we don't live in that perfect world I want. I think it would be helpful to direct states to seek out the technical assistance that's available in the statute and to report on their utilization of that technical assistance, and then also provide you know some information about technical assistance they would want because I think that would be helpful for all of us to understand, you know, what other barriers there are that are not related to resources? And it would be helpful for our preamble, and I remember we said that we were able to write in our preamble to the regulations. I would like to have it included in our preamble what those forms of technical assistance are available and what the consequences may be to states and districts that don't comply with all of the federal and civil rights laws that address this accommodation issue not just for EL's but also for students with disabilities.

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Ms. Jackson: One barrier or one issue I think that we haven't addressed, but I think is more appropriate for 5 A instead of 5 B. Is the issue of accurate identification of el students in a way that is not detrimental and prohibitive to their access obviously? In my district students are classified when parents check one box or the other upon registering with the district. This is led to really variable results often like inaccurate results. So I know that we may not be able to be prescriptive about it but having a much more broadened and exclusive definition. I know Leslie referred to the categories I want to see what that is. There has to be some guidance at least on how to determine and who is an el so that if we are talking about how we are going to accurately assess their knowledge and abilities we have to actually be assessing the right kits.
Mr. Chau: I want to touch on this question again representing California which we have based on this data 1.5 Million EL students in our state. We represent certainly the bulk of the students who would be served by this issue. I just want to emphasize that I think it's important to reemphasize what was mentioned before that there would be no threshold for guidance. This is something that states can make determinations about in partnership with their agencies as well. In part of the regulations it talks about the ability for local education agencies to extend the time line for which students are assessed in the other language, correct? So I think that if we also focus on local education agencies making that determination I think that will be key. I want to provide a context -- may even though we have so many students that may not actually be that impacted. The challenge
may not be as severe because of the prop 2.7
eliminated bilingual classes for -- when we
talk about assessing students in their native
language we have 1.5 million of them. The
majority of the students who might be
possibly assessed in their native language
would mainly be the newcomers. Most of our
English language learner plans at the agency
level are focused on English acquisition
starting from that first year on and so we
wouldn't actually be assessing based on at
least in our district our master plan after
basically one year of sort of bi- language
education that covers some of the content
area in their native language after that.
The expectation that most of the core
instruction is English on their knowledge and
abilities. If primary instruction is in
English we would expect those students would
be taking those tests in English after the
first year. So I just wanted to provide that
context to at least share with the committee about why this might not have a big impact on California even though we have such a huge student population of EL students.

Ms. Podziba: Thank you. Let's take a bit of an early lunch today and come back at 1:05 and we will start with 5B.

Mr. Rooney: That's fine. If you are looking for a lunch and you are looking for a room to meet in 1W 109 is the room you can use. It's back towards the same place you were the last two days. We are changing it every day. 1W 109.

Ms. Podziba: Just a couple of things to remind you of public that there's a public comment sheet. There was a phone that was found at the hotel if anyone lost their phone it maybe at the hotel. It had a blue cover on it. If you lost a phone with a blue cover it's at the hotel.

Ms. Jackson: I also misplaced my
glasses last night if they happen to show up at the hotel if you can see them that would be awesome.

Ms. Podziba: Either that or they are in heaven with all the other glasses that have been lost. About the subcommittee, we meet two weeks from today. That's a very short time from the work of the subcommittee. The people who intend to participate on the subcommittee at the break get together to identify a time for a conference call.

Patrick, do you have something to say about that?

Mr. Rooney: I appreciate the people that volunteered. Again, the subcommittee that spent a lot of time talking about these issues I appreciate your willingness to keep engaged and thinking through it in the short interim between the meetings. If possible we are thinking about how to take all of this feedback and draft something that's
responsive to the comments we are hearing
that we can bring back for the basis of
discussion in session two. If the
subcommittee we are going to develop some
sort of proposal or recommendation or extent
for the committee if we can get it by say
middle of next week if that's possible? That
would help us get a chance to think about how
to incorporate that idea into the discussion
that we are putting together for starting on
April 6th. I wanted to flag that as a
possibility that if you had something to
share with the committee for the Department
that we can think about having incorporated
by the next Wednesday it would be very
helpful for us.

Mr. Payment: I would like to suggest
when we do break that before we scattered
that we maybe meet over at the Department of
education and align our schedules. Monday
might work well for me. I agree whatever we
are going to do it's helpful you have it with enough advanced notice.

Ms. Podziba: Subcommittee doesn't have decision authority. It should be as a recommendation to the committee, anything else before we start? I do know that a couple of people have to leave before five o'clock traffic issues require them to leave a bit early to make their flights.

Ms. Jackson: I am also flying out. At the break if everyone is flying out early could meet over under the TV over there it would probably be good to coordinate cabs, if possible?

Ms. Podziba: With that I think we are ready to move to 5B.

Mr. Rooney: We will see if this works? We are going to switch to 5 B, which is now focusing on English language proficiency assessments. I did want to say one or two things if it's very rich this
morning and suggestions which I definitely
much appreciate. I think there were a couple
of comments we spent a lot of time talking
about native language translations. I
appreciated Audrey and Rita and a bunch of
others talking about the context of
translated in context of how states are
providing accommodations and accessible
students and translation are one potential
option that the states have and is that going
to work better? And you know the other piece
of this about Rita's comment around
compliance with the law, and title six is
part of, you know, the other piece we talked
about yesterday? The Department does a peer
review of state assessment systems and
through that peer review we look at how the
state developed their assessment and the
documentation they have that the test is
valid, reliable, fair accessible and that it
provides good data for all kids. The
translated assessments or not they have to be looking at that data and looking at that evidence and providing the documentation it gets reviewed by peers. To remind you it follows the APA testing standards that are the experts in the field that have identified how to design a good assessment system. All of these assessments go through and they are documents how they design their assessment systems. I am going to try this. The other thing that I think Rita mentioned and a few others around technical assistance. I did want to address this a little bit. There's a bunch of guidance documents that the Department has put out through elementary and secondary, and in the language acquisition office where our office of rights for accommodations for all kids including English learners. There we fund some non-Department centers that provide technical assistance to states. There's a series of regional centers
for each group of states that can provide the assistance for whatever the states think they need assistance, and they have a plan where they work directly with those providers to get assistance on whatever topic or education they need. There's also several content related centers, one of which is the national clearinghouse for English language acquisition. I said that right which is specifically providing assistance to states around English learner issues. There's also a center for standards and assessment, and standards and assessment implementation which is providing direct assistance to states as they requested around their assessments. There's technical assistance vehicles that are provided. We also have a small discretionary grant program which is specifically around assessments and we provide grants to states to try to identify new or different ways to assess or report or
identify how to better provide better accommodations and accessibilities for all kids including English learners and students with disabilities. That's been ongoing since NCLB and provided grants and we provide small grants to state where they can identify different ways they can view their assessments and scale through other needs. I just wanted to give that little bit of context before we started. With that I want to switch to English language proficiency assessments. As we start I would like to ask Mr. Hakuta to give history around this topic.

Mr. Hakuta: Thank you. So English language proficiency assessments have evolved since their introduction in 1970's and to the purpose of those assessments some of you may recall assessments like the bilingual syntax measure and the IPT and the loss and so forth. We are introduced to identify limited English proficient students which is who we

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1 call the students then for purposes of title 
2 six compliance with the civil rights act of 
3 1964, and those requirements have been called 
4 the loud remedies. In the present day in 
5 coronation is the dear colleague’s letter 
6 that Rita mentioned earlier. In the part 
7 about identification of students who would 
8 fit under title six that's how those 
9 assessments initially got introduced and 
10 mandated for English learners being 
11 appropriate services to meet their language 
12 and academic needs. These assessments have 
13 grown in sophistication over time, and under 
14 no child left behind they became part of ESEA 
15 accountability, but under the requirements of 
16 title three with the requirement that the 
17 English language proficiency standards upon 
18 which they are based the term is that they be 
19 aligned with the content standards of the 
20 state. ESSA similarly requires the alignment 
21 of the ELP standards to the state academic
standards. So it's the alignment or various federal documents that have used another term which is actually technically more appropriate which is correspond that the English language proficiency standard should correspond to the academic standards and the reason why alignment is technically correct is alignment really refers to basically looking at the same thing, so if you are looking at a map construct and that an assessment aligned to it should measure math right? And so language is the language that's needed in order to access and demonstrate knowledge of the content and so it's really, we need a different term than alignment although the law has an alignment in it. The term correspondence has been introduced and I actually think it's a good way of saying they need to be related and supportive of them of the standards. For example, if you are talking about a

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mathematical standard around being able to understand the reasoning of others and so forth around the particular math topic is really the listening and the speaking skills that are involved in understanding of that math construct that needs to be looked at.

In any event this idea of alignment is that's what it means and that that's the crux of how we should think about the relationship between academic language and the kinds of academic assessments that measure the academic constructs from the questions and 5A. We know from research with the older academic assessments, and I already mentioned this and of course the last discussion that they are related to the academic assessment. We have research that shows correlations between academic language, academic assessment performance and English language proficiency assessments and they are correlated and that correlation varies.

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1 depending on the level of English language
2 proficiency and that's a known fact. We
3 don't know and there will be research coming
4 out and in the future about the how they will
5 play out in the current assessments being
6 used which have larger language. Current the
7 quality of academic assessments is regulated
8 as Patrick mentioned through the title one
9 peer review process, state standards an
10 assessments. The English side of the
11 proficiency assessment which have been under
12 title three have not been subject to that
13 requirement so basically it's actually up to
14 states that provide assurances that there are
15 high quality and so forth. The review of the
16 ELP assessments could be integrated I think
17 that's I don't know I don't mean to
18 anticipate a solution that's part of why this
19 question comes up is how does that play out
20 within the current title one requirements
21 given that these assessments are now part of
title one. An additional quality situation
is the use of English language proficiency
assessment for the identification of English
learners which is required by the loud
remedies. The case was mentioned earlier of
a situation in which home language surveys
which really triggers the language
proficiency assessment is used as the sole
basis of identification and that would not be
consistent with this requirement. They also
need to be assessed using this or at an
assessment actual assessment of English
language proficiency. That's required under
the loud remedies. It's also required that
states established and implement after
consultation with LEA's representing the
geographic diversity of state standardized
English learners. Exit and procedures must
include a requirement all students that might
be assessed within 30 days of enrollment
within a school or within a state. This
1 raises a question because in most cases and
2 practice these assessments are used for that
3 initial identification. Often there's some
4 smaller version of it a screener of based on
5 that test that those quality issues are
6 impacted by the quality of the title three or
7 the English language proficiency assessments.
8 Thank you.
9 Ms. Podziba: Clarifying questions
10 for Kenji?
11 Mr. Hager: The English language
12 proficiency assessments are they now part of
13 title one and are they subject to the peer
14 review?
15 Mr. Rooney: I don't know if we are
16 ready to answer that question.
17 That's fine.
18 Mr. Cheeks: You used the word
19 correspond is that different than the
20 standards and their alignment to the
21 assessments the term alignment is used there
without a reference to correspond that's
different that that related to EL Standard.

Mr. Hakuta: The academic
assessments -- English language proficiency
standards also have tests that align to those
standards, the relationship between the
English language proficiency standards and
academic standards so they are different.
You know one of them is really about the
content of the academics and what they
represent. The language proficiency
standards are really the language that's
necessary to learn in and express
understanding of it, so they are related but
they are not aligned in that they are not the
same thing.

Mr. Cheeks: Thank you.

Ms. Podziba: Any other clarifying
questions?

Mr. Rooney: I think we are ready to
go to the issue paper.
Mr. Rooney: Thank you Kenji for that introduction. So stepping back just the English language proficiency tests which ELP for short are solely different than the content assessments that you have been speaking about for the last day and a half. This is test to see their level of language proficiency so that way they can make sure students can meet the standards of education in the school. It's not tied to a particular grade. It's something that states have for all English learners in their state. I want to separate that out a little bit. As Kenji mentioned generally or is required by law the ELP tests have to measure speaking, reading, writing and listening, there's four domains that are laid out in the ESSA. As Kenji mentioned this is something that's not a new requirement that states have ELP assessments in states that change that. This was something that was covered in around supports.
for English learners parts of it are in title
three. The part of it having ELP tests which
puts it in the same bucket of information as
the state assessment. It makes for this
collection today. The one thing that we
wanted to point out and particularly draw
your attention to is laid out in the issue
document. If you look at the first paragraph
where the statute says that the annual ELP
assessment must be, sorry that requires that
the state ensure that each school district in
the state provide for an annual assessment in
English language proficiency for all English
learners. There's other sections of law that
talk about the ELP test that specifically
refer to that as a state or statewide ELP
test which is why we think it may be helpful
to clarify here whether that should be
clarified in the regulation. The other thing
to point out about this is a statewide ELP
test is not something that is new. If you

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look at the appendix or the additional piece of information that's in your binder after issue paper 5B it provides a state membership in ELP assessment consortia. This is similar to for the alternate assessment that we talked about yesterday, and it had BLM that the states came together to design alternate assessments. We talked about yesterday two group of states that designed reading assessments and there were also two states that came together to assess ELP assessments. It covers 46 states if my math is right. Even before 2015-2016 when you have these states in one of the two groups of states. All states prior to this had a statewide ELP test they were using to measure the language proficiency of their students, so the content of that statewide ELP's is not a new concept. That's how states operationalized this. I think that's all I want to say that helps with the context and provides the appendix.

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With that we actually have two questions. We had draft language that we proposed on this one that might try to address the question. I will first start with the question. I will ask the first one. How can regulations related to ELP provide consistency and clarity that ELP assessments must be statewide?

Ms. Pompa: If you would put language in regulation around 3, what is it the assessing English proficiency that talked about the fact that this must be statewide? It would be very useful because I think it's not clear there. It's a statewide assessment that requires I think you pointed it out earlier. LEA's didn't talk about it. I think you have a lot of standing to do it as a regulation as you pointed out several places in the law that refer to statewide assessment. We know states will be required now to develop standardized entry, exit.

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criteria which you can't do unless you have a statewide assessment. I think that would fix it that would help.

Ms. Podziba: Other comments or questions?

Ms. Jackson: I don't know if this is appropriate place that I would urge your consideration for it if this is not the appropriate place perhaps? Let me know if you have any ideas where it would be? We spoke earlier about the under representation of being identified with learning disabilities early on and then over representation later. I am wondering if it's possible to have advice or guidance around also assessing like sort of basic chronological retrieval, students abilities early on because whether they are in no matter what the language is you can do it with colors or objects. That would be fairly efficient way into incorporate with the other
components of speaking, listening, reading
and writing so that there's not a big gap in
between identification of what is a language
based issue and what is also compounded by
something else. Does that make sense?

Mr. Rooney: I think I get your
point. The interaction of title one and IDEA
is it governs how we identifying students
need services? I am happy to take that back
and put a noodle on that. It may not be
appropriate here.

Mr. Evers: I agree that the
inconsistencies should be solved through
regulation.

Yeah. (laughter)

Ms. Podziba: Make a note of that.

Ms. George: I'm sorry I have a
clarifying question. I should have asked
this during the background. I am sorry. How
is interim progress usually measured in
assessments and is there data collected about
interim I guess improvement over time?

Mr. Hakuta: Currently under title three there are two ways in which progress is measured. One so this is what's referred to AMAO one and two. I can never remember what they dually stand for like annual measure of academic -- I think? AMAO one simply we got the reports the percentage of students who progress from one level to the next, so most assessments have five or six levels, and so it's a percentage of student who is move from one to two or three to four, et cetera. And states currently set those and you report the percentage at least they set targets and present those schools as targets. The other is percentage of students that obtain proficiency. This is going from what usually four or five on the overall assessment.

Mr. Rooney: One clarification on Kenji's point that AMAO is for the how they measured growth and districts for ELP
assessments. The law changes that in the ESSA and I don't want to get into the weeds of that now, and actually AMAO district level information is no longer required under ESSA once ESSA is implemented, and actually because ELP tests are in title one it becomes a school measure. That's how it was done it will be slightly different under ESSA.

Thank you.

Mr. Chau: Did I hear this correctly about the ELP's before were not required to meet the same regulations that I mean in terms of the level of expectation that the new assessments require or required to meet now? I don't know if I said that right?

Mr. Rooney: To your question previously the ELP assessments under title three did not go through the same peer review process that the reading, language, arts assessments went through. I think you could probably read the ESSA to say or putting it
in title one the same requirements to have a
peer -- I don't know -- I am looking at my
attorney to either kick me or say something
else.

Ms. Rigling: The peer review
requirements are not specific assessments,
per se. They are specific to things included
in the state plan both content assessments
that we're talking about and English language
proficiency assessments are both part of the
state plan requirement. At the moment I
don't think we have decided whether ELP
assessments will go through the formal period
of a process. It will have to be a different
process because the requirements are
different. That's to be determined.

Mr. Chau: Not all of the states are
in part of this consortia including
California. I am wondering what the
simplifications for the states that are not
part of these. I know in California they are
in the process of developing a new assessment
as well. I would hope that we are cognizant
of that as we make any such changes.

Mr. Rooney: I would say you are
predicting the second question that how might
regulations fulfill the requirement under
title one? I don't know if you want to hold
that until we hear all on the first question?

Ms. Evangelista: I wanted to respond
to what Ms. Jackson brought up. I guess
because we are a high school I notice an over
representation of students, so I will just
cautions if we are going to include something
about assessing when you are assessing their
English, and you are trying to also assess
for other issues again because it goes to the
other ELP's. It needs to be done in the
native language. It's very difficult in the
first year or two to really figure out what's
happening unless you are assessing the
student in their native language in terms of
accessibility. There we have a lot of students that were given IEP's in middle school and we were able to move them away from accommodations because with time it was a language development issue not just a high school thing. I see a great number of students over represented in that.

Ms. Jackson: I want to clarify what I said probably wasn't appropriate or allowed by the reaction of people's faces. I was thinking about sort of in early years so maybe pre K through when we were trying to determine whether reading and language difficulties are results of sort of a neurological difference or simply an exposure and environmental difference in that place.

I don't think we are doing enough to screen for kids. Any kid but phonological or and deficit screenings for those children in primary grades as they are being looked at.

Ms. Podziba: We are moving to
1 question two is there a discussion of
2 question two?
3 Ms. Pompa: So my answer to your
4 question is that you must put English
5 language proficiency assessment through a
6 peer review process. There are a number of
7 reasons the first is that as states are
8 redeveloping their standards and making them
9 more rigorous many of these assessments were
10 developed to correspond with all standards
11 and they need to be redone. I think from a
12 practical point of view that the data exists
13 and the willingness exists in the consortia
14 to look at these and take these through a
15 peer review process. I know states like
16 California and Texas that aren't part of the
17 consortia might take issue. I think even
18 they have the resources to be able to do this
19 and should do this. It's an important step
20 again, I connect this with the new
21 requirement that English language proficiency

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be included in the states accountability system, so you want to make sure that as states that you have the best developed test to be able to measure what's going on with the English proficiency. If it's going to be part of your accountability system never mind, now it's part of overall accountability it's very important. Related to that Kenji mentioned screen screeners and what states have done as many of you know is give a shortened version or sometimes a different version of the English language proficiency test when they first identify students. We need some regulatory language about how those screeners need to be aligned with the English language proficiency assessment and even put them through a peer review process also. I think that covers it.

Mr. Pohlman: So the question that I honestly am pretty agnostic about is the application of the peer review process or

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regulations to the ELP's. I think that right
now some of the language we have in front of
us we have been wondering if parts of the
proposed regulation of 200. 2 (B)(2) around
UDL both should apply or appropriate to
apply. I would leave that to a question for
Kenji and Martha if there are other
components around 200.2 (B)(2) that we should
also ask similar questions. Is there a
difference psychometric process or validity
process that should be separately codified
for ELP's versus other state assessments I
think is my general question. I am not
entirely certain because this is not my area
of expertise that these can be laid over one
another. My other point is very technical.
I believe the only place where UDL's
mentioned in the law is actually under the
assessments that the alternate assessments
for students with the most significantly
cognitively impaired students. I wonder if
there's support in the actual text of the legislation to extend that to other assessments, and you know the assessment provisions we have here in our binders I am not sure I have all the information I need to answer that question. This is way more of an issue of clarify for me but not one principle. I think it should be very clear in the regulations what test apply to the ELP's and that should be supported in the -- I want to point out where there's conflicts there specifically in 200.2 (B)(2).

Ms. Harper: Bringing it becomes to our definition of EL's and understanding that folks who are impacted by native American language usage such as our students in native American language medium schools must be considered in here as EL's talking about ELP assessments now included in schools and accountability we would again request timely relevant consultation with tribes as required
under the -- to this and all of our
populations that are identified as Native
American language students. That definition
can be found in title three as we were
saying. It has over lapsed because now this
is affecting us in that area. So we would
say we would require timely and relevant
consultation with all of those stakeholder
populations on ELPA's English language
proficiency assessments are being played out.
We would request a definition of American
Indian on the forms that are used to identify
our students. Then we would talk about a
schedule. We talked earlier about academic
language proficiency acquisition and the
different time lines. Now realizing that
effects our different populations in
different ways. Kenji was speaking about
that prior if you had a student who had been
in an institutional educational period they
are going to perform differently at different
times into an English medium program. And again, Puerto Rico students in U.S. territory are Spanish, limited Spanish proficiency students they are given extensions from annual ELPA's and we would like to suggest that our native language medium students are given the same consideration, students in Puerto Rico use English language arts as a subject area. They use it as an extra academic assessment indicator and they are still taking it through the medium of Spanish. Their previous accountability workbook have been taking although it's until the law they are given an exemption where they are not taking an ELPA annually 3, 6, 8 and 11 so again we would save you know, let's close up that discrimination gap with for our native American language medium students.

Ms. King: There's a bunch, 7 different references to universal design,
different places most of the time. It says
all students including English learners and those with disabilities. I think the principle design generally applies. I don't know if there's a specific area that you are worried about? Somebody said yesterday this was sort of a problem right because we do use the language of universal design too often only when we are talking about children with disabilities, but the whole principle is it's supposed to apply to all students.

Mr. Pohlman: I am really agnostic.

I am trying to go back to the text we don't have all of it here. I think my point to the extent is there's different things that we should be, these are two different types of assessments. They are measuring different things I am not overly familiar with the differences. I could assume there would be some. I want to make sure that we wouldn't inflate a requirement that was specifically outlined in the act for other types of
1 assessments. To this one in particular
2 that's a matter of protections. I get that.
3 This is a matter that I don't want to
4 complicate a process for high quality ELP
5 assessments to be actually go through the
6 process because of something we missed in a
7 regulatory process in over applying the term.
8 Ms. King: I think you are right sort
9 of. The other half of my comment would be to
10 make sure part of the reason the peer review
11 process is important is making assessments
12 are all reliable for English learners with
13 disabilities. Part of the process as much
14 consistency in sort of assessment review
15 processes as possible given that different
16 assessments have different purposes after
17 different students assessed.
18 Ms. Jackson: So I am lying in post
19 lunch haze so if I miss this somewhere let me
20 know. One concern I have and I'm not an EL
21 expert. It would be for states now

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accountable for increasing proficiency levels
to simply lower the bar on what it takes to
be proficient, so I would be curious what
measures are guardrails is a popular term
being used could be put in place for states
to be accountable for the subgroup for EL's
not proficient and each after they reach
proficiency perhaps in disaggregated and all
together. They continue to be accountable
for ensuring proper supports in place whether
they have exited official status or not. I
will leave it at that.
Mr. Payment: I have a clarifying
question, so on another national committee I
was on there was a presumption by the agency
that what they were doing by meeting with the
subset of tribal leaders across the country
they were fulfilling the consultation
requirement under the federal government, so
the consultation requirement flows from the
President's executive order that specifically

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stipulates that when there are effects in Indian country that any proposed rules, regulations and interpretations under the Department effect Indian country that it go out to consultation. That's a very specific thing under the President's directive. Then also I have a copy of the Department of education consultation policy and it looks like, it looks like as we move forward and we have something concrete to propose that is required as well for the 30 days' notice out to tribal Indian country to individual tribes, and so I guess I would like a clarification of negotiated rule making as it relates to the consultation policy, and then also as an elected tribal nation of my nation I would like to request that consultation.

Mr. Rooney: I don't think we have an answer to that right now. We will figure out how to respond to that.

Ms. Evangelista: I have a comment or
1 question that goes with it. I just want to
2 remind everybody EL's are the most tested
3 group because they are required to take the
4 regular English assessment after 12 months,
5 math assessment and science in high school,
6 and then these English proficiency tests
7 every year which is a tremendous task I think
8 for schools to implement. It takes away a
9 lot of instructional time, quality
10 instructional time for students. I wonder if
11 there has been any discussion? I know that
12 has been the case for us because while the
13 English test and the proficiency tests are
14 testing two different things. I think most
15 of us would agree that you know you couldn't
16 really pass the regular English assessment
17 without being able to prove English
18 proficiency. I wonder if it clarifies things
19 in some states or if this is beyond the
20 regulation I don't know? In some states
21 there is the ability because students, this
has happened to us over and over again where
a student did pass the regular English
assessment but didn't, wasn't able to test
out of the proficiency test. Part of that
was quality of the testing and all of that.
Is there anything or is that something that
could be part of the regulation or is it
beyond the scope?

Mr. Rooney: I think we would like
to hear more from other people in the
conversation. I don't think we have an
answer to that question.

Ms. Pompa: I personally think right
now it's beyond the scope. I do know that
the technology of assessments is developing
rapidly and there are researchers that are
working and Kenji can speak to this more.
They are working on integrating the two kinds
of assessments that you would be able to do
that. I don't think we are quite there yet?

Do you want to comment?

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Mr. Hakuta: I think that's absolutely right. Especially if the academic assessments include more and more demands of student language they are able to pick up on those things, but we are not quite there yet but I think that idea has been out in the field.

Ms. Podziba: Patrick, do you want to introduce the regulatory language?

Mr. Rooney: That would be great. To remind you it's been awhile since we looked at the last few issue papers. We did not have proposed language. From Rich's point earlier I think we will get to his comment at the bottom of this page. The text in black is our current regulations the text in blue is language that we are taking from the new law from ESSA and then the next in red is where we have proposed clarifications for your considerations for the discussion of what the regs may include to make it clearer.
So the first section under three is actually a lot of the text is when NCLB went into the line there was a time where states had ELP assessments since that's not relevant we struck through that part of the text. It makes it hard to read. I apologize to that each state must and then under A develop uniformed statewide assessment of English language proficiency including, reading, writing, speaking and listening skills. We have added that piece. It sounded like there's general agreement to keep that so I will keep moving. B require each ELA to use such assessment to assess annually the English language proficiency, including reading, writing and speaking skills, of all students served by the LEA. I think mostly that is from the statute. A few changes instead of calling students limited English proficient we are now term English learners that's the change there in B. Moving on when
they first developed ELP assessments there was a clause in here that permitted the secretary to give states additional time if there wasn't a particular reason for that to happen you can see in the paragraph language that it was a natural disaster or a person declined of natural resources since we are past that point. I will comply under NCLB and now under ESSA it seemed irrelevant.

Roman numeral II and Roman numeral two the assessments under paragraph three I in the section which is the above piece we just mentioned must be A aligned with the states English language proficiency standards under 1111 (B)(1)(f) of the act and that is from the statute where it particularly references the requirement to have an English language proficiency assessment and provide coherent and timely information about each students of those standards. We added that clarification and (B) developed and used consistent with
the requirements of section 200.2 (B) (2) and (b) (4) and 200.2 (B) (5) this is where we get into cross references. Let me explain the references. If you skip ahead to issue paper six you can see what this language is. B (2) is talking that the assessments be valid, reliable and accessible. This is also where it will include references to universal design for learning, so in this section we are saying that the ELP assessments need to meet those requirements to have valid and reliable results. Let me see if we can find the page. If you were to look on issue paper six. 200.2. It’s on the bottom of page one thank you. Top of page two. So design valid and accessible for use of all students. It talks in the next piece about universal design for learning. I think rich is correct that the statute references UDL in response to the content assessments reading, language, arts and math and science does not reference
in respect to ELP's assessments. I will flag that for you as Rich's point. Then if you look further on before is page 3 and towards the bottom again, about being invalid and reliable for the purpose of assessment system and the five is right below that and that's the system be supported by evidence with adequate technical quality consistent with the requirement of the act be made available to the public. We will talk about six in a little bit. Those are taking things in from the ESSA and the statute. I will stop there and see if people have questions about the language on 200.6.

Ms. Rigling: Maybe this is stating the obvious, but I just wanted to point out that this is one of the areas that the regulations I think are useful. If you look at 3 romanette one developed the uniform statewide assessment system including reading, writing, speaking and listening if
you look at a part of the statute that talks about establishing an English language proficiency assessment. It doesn't include those words. Those words come from the cross reference to English language proficiency standards. So the cross reference is in the assessment provision and we thought it was helpful to pull out what those content areas of those standards have to cover to make it clear that in fact that's what the English language proficiency assessment needs to cover also, so that's an area where it's all from the statute, but it's from two different places in the statute.

Ms. Pompa: I would like to go back to the requirement that the assessments be put through a peer review process. Did you not include that because you weren't sure you wanted to do that as a Department or would it be elsewhere outside this section?

Ms. Rigling: I am not sure if we did
it for content assessment? I don't know that
we have that specifically in the regulation/
Ms. Pompa: For content assessments,
it's not law?
Ms. Rigling: The law tells us to
peer review, set up a peer review system to
assist the secretary in reviewing state
plans. Content assessments are part of the
state plan. That's where we picked up
reviewing content assessments through a peer
review process. I don't think that we had
that in the regulations under NCLB and I mean
maybe we should. It's been like you said
it's been in the law so that's how we applied
it.
My guess is someone advocating for
that to happen. What I would say is the fact
that you didn't do it for content assessment
might not apply because they're a reality.
The fact they are not a reality yet for the
English language proficiency assessments

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would lead me to believe that would happen if we had a regulation for it and I recommend it.

Mr. Evers: I support the regulations as written.

Ms. Podziba: Minimalist.

Mr. Hager: Yours is too quiet this is too loud. For clarification because you have 200.2 in this regulation which talks about the students with disabilities and even though they explicitly say 200.6 it's kind of implicit is that how you are interpreting this? When you in your proposed language you refer to 200.2 which talks about reliable and accessible for students with disabilities and English learners then you have 200.6 which is more explicit about what that means. I think earlier on you did have an explicit to 200.6 200.2 -- I don't know if we want to add 200.6 to your proposed regulation to be consistent where we put it in other places. It's more
of a question I guess.

Mr. Rooney: I think maybe we should hear from others on that question?

Ms. Podziba: Do you want to be explicit on 200.6?

Mr. Hager: That's where the accessibility requirements are. That's what we were looking at yesterday. I am pretty sure we talked about in the general assessments we added 200.2 and 200.6 I think we should be consistent and put it in here as well that's my proposal.

Ms. Pin Ahrens: I want to state that I do agree with the recommendation to require peer review process for ELP assessments just to make them more rigorous and incorporate the values of fairness and validity and Reliability. I agree adding 200.6 to the recommendation as recommended. I would like to amend the piece or add onto the piece it's been recommended to have, provide coherent
and timely information about each student’s attainment of the standards to also include how that impacts each student’s reclassification according to the state criteria. Also, how students compare to other English learners at that grade level, and include information on how to look at cross-populated data which would be available. I would also like to add in that this information should be conveyed in the culturally and linguistically appropriate manner to participants and family. Thank you.

Mr. Payment: So I am trying to wrestle with understanding why we wouldn't have peer review, and then I do have concerns with it because I am, I chair the national institute of health travel consultation advisory council. We have concerns with peer review and that our peers are usually not part of the peer review. There's a cultural
lack of knowledge and understanding when they are reading grant proposals and who we are and our Identity and all of that. However taking that hat off and just looking at it as an academic the standard for determining validity, reliability and fairness would be through peer review and so that is the standard in academia. I think that is the only objective way that you can come up with it. Otherwise an agency writes it and it's not subject to peer review. Maybe we need to talk about that for a second or understand that is how you arrive at validity and reliability is subjecting your science to others that are experts in that area to be able to pick it apart and find weaknesses and determine that it's valid. So I am not sure why we are debating that part unless there's some deeper issue that I don't understand?

Mr. Pohlman: Can I ask a follow up question about the inclusion of 200.6? Are
there specific provisions within you know
200.6 it is very long. Are there specific
elements that you feel like are more germane
to the inclusion than others? I am just some
of this is school level responsibilities and
other things I am just wondering if that's
near at all if you are just seeking for the
Department to go become and kind of looking
at elements of 200.6. It's a finer tip to
put on that. Do you want a minute to think
about that?

Mr. Hager: We don't need to consider
provisions based on the alternate
assessments, oh we do? Okay. I will defer.
Ms. Thurlow: The question is whether
we need alternate assessments for the
students with the most cognitive disables. I
think there's a recognition in the general
assessment that all of those students work
with same standards they demonstrate their
proficiency and achievement in a different
way that's the alternate achievement
standards. I think if you talk to experts in
the area of severe cognitive disabilities,
the students we're talking about they will
also indicate that their English
proficiencies if they are an English learner
or not will not be exactly the same as a
student without a significant cognitive
disability. It's an area of research going
on right now. If you want to talk about
whether just to eliminate them from having an
assessment that measures them against
alternate performance standards.

Mr. Ahart: I wonder if we might wait
until we get to question 6 about what to and
not to include and all of this revised
language is that all right? I mean there's
elements in here that are fine and some I
think warrant some further discussion.

Mr. Rooney: We don't need the -- I
am open to things that we would want to

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1 include or not include. If there's other
2 things that people want to raise before we
3 move onto raise on this before we move onto
4 paper six.
5 Ms. King: I want to make sure we are
6 providing accommodations we need to be
7 providing so that all students are -- it so
8 hard to get advice in real-time. All
9 students are able to participate in ELP. I
10 don't think any of us want to be in a
11 scenario where a child is un-accessible. We
12 have accommodations to make sure we are
13 getting valid and reliable accommodations. I
14 am cool with Thomas suggestion that we sort
15 of take this as a bucketed whole and move on.
16 I wanted to make sure that we are attending
17 to that.
18 Ms. Briggs: I am going to comment on
19 Rita that you can reference to 200.8 which is
20 the text about student reports.
21 Ms. Podziba: Is there anything else
to add to the Department on this language?
The Department will take this back and consider the suggestions that have been made?
Mr. Rooney: Yes and to Thomas' point there maybe questions that come up that will help when we get into issue paper six that we can figure out how to properly word this if you can help us with that that would be great.

Ms. Podziba: Any other issues with 5 B? Let's move onto issue six.

Mr. Rooney: The result of this is wonderful. We have a little bit longer. Issue paper six is potentially very long if you started reading ahead. We could spend a lot of time on this although we can talk about whether how the best use of our time talking about this. I mentioned yesterday, I mentioned on Monday afternoon that when we do these assessments that our original thinking when we were trying to figure out what to
bring forward for discussion was that we
would start with the existing regulations
since there are extensive regulations and
many of the requirements about state
assessment systems have not changed from NCLB
to ESSA. That we could use the existing
regulations as our founding point and then
build from there where the language and the
new law is different than the language in the
old law where something additional has been
added. I think that the last day and a half
when we have been talking about the different
issue papers is where we focus our time and
attention on the aspects of the law that are
particularly new or different or unique and
didn't exist under NCLB. We wanted to have
conversation about each of those pieces
before we can figure out the best way to get
all of your feedback and advice. Issue paper
six is where we did try to update the
existing regulations with what is in the new

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1 statute in the new law, so I will start by
2 just this is not all of the regulations you
3 actually have the full current regulations
4 back in tab C which covers all of the
5 assessment regulations as they are currently.
6 This section should be for six just take a
7 couple of the more substantive sections of
8 current regulations and updates them with the
9 new statutory language. So all of the text
10 that's in black is the text that is the
11 current regulations and then where something
12 is eliminated we cross it out in red, and
13 where something has been added we added it
14 using changes so it's underlined for you to
15 see the difference. I think it may be
16 helpful to start going through this. I can
17 flag a few things and I don't know if we want
18 to read through it line by line.
19 Ms. Podziba: Just a question is the
20 red text on this reg text is the red text on
21 this regulatory text essentially would be

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blue in the way the other papers were prepared?

Mr. Rooney: Yes that's correct. I will give you a few examples. I can point out something that I will try to set the context for you 200.2 (5)(1). We crossed out the phrase beginning in the 2007-8 school year because again as I mentioned a little while ago these regulations were from 2002 and at that time when NCLB was passed there was a time Line from when assessments had to be phased in and science assessments weren't required until 2007. Since we are past that it seemed no longer relevant. If you looked on 200.2 (A) (I) you see how we changed our language? So in the old regulations we said that the state has adopted challenging academic content and student academic achievement standards. The language in the new statute in the ESSA references content and achievement standards and combined them.

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into one as the challenging state academic standards. Throughout our regulation we tried to change where we referenced content and achievement standards and just say challenging state academic standards which encompasses both these things. I am trying to think there is if I can find an example of the computer adapted testing. If you look on page six on the bottom half of the page number two we talked about a computer adapted assessment, so I will try not to -- I will try to explain this as good as I can. The text that's here is the statutory text from the statue around computer adapted assessment. It does not include the text if you went back and looked at issue paper one there's some language we proposed adding in red. That language is not here. This is just the language from issue paper one that is blue. Here it's red. This is what it says about computer adapted assessments (II)

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and then three, but actually in issue paper one that 7 becomes proposed number four and that is proposed number three is that clear?

(laughter)

Ms. Podziba: Is everyone following that? I just want to get do people are -- I mean it's complicated. Try to imagine this red text being blue. Then it could be consistent with the other issue papers, so what Patrick is pointing to is that for computer adaptive testing the red text in issue six is paper is the blue text in issue one's paper.

Mr. Rooney: That's right.

Ms. King: So the red text from the other sections is not in here at all? Your additional proposed language isn't? You are faithfully transferring statutory language into the red text?

Mr. Rooney: Yes, correct. That our hope is imagine this is blue and we would add
some of the text based on this discussion which might make sense in discussion for session two.

Ms. Jackson: If you need help with coding, coding. I wanted to double check on page two at the top (II) I am pretty sure the universal design for learning is the -- You flagged for us yesterday going back to page two we have the term universal design in quotation Universal Design for Learning. We haven't had a chance to discuss that but we think you are right as far as I know.

Ms. Rigling: The only typo on the document.

Ms. Briggs: I am just wondering in terms of a process of helping us move through this if when suggestion might be to focus our time on those places where we haven't already spent a lot of time discussing the issue in depth. I might be hard just on the computer.
adaptive thing you mentioned trying to flip
back from the section and the issue paper.
Maybe we can assume that you got all of that
great information and it will be here next
time and we can talk about the new stuff.
It's just a process suggestion.

Ms. Podziba: There's also a question
and I don't know if people are ready to do
this? If there's some of this is lifted
straight out of the statute and so the
assumption is that doesn't need to be
discussed because it's the law already. Some
of this may seem slightly interpretive to
people when it's not precisely statutory
language so there's a question, are people
wanting to flag that and perhaps have
discussions about those items if there are
any?

Mr. Rooney: Sorry, I'm trying to
think about the suggestion the best way to
handle it. Do you want us to do that now and

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walk through things and I don't think it's quite fair to ask you to identify things that you want to flag for us that maybe there's some areas that you could flag the majority of it is a long document I realize. It's pretty technical. If there's people that have suggestion there's a couple of things that I would flag for you guys to just make you aware of or discuss or walk through with you. A lot of it I might propose to not do that.

Ms. Pompa: Perhaps I misunderstood? I thought everything was from the statute? Why are we arguing interpretation?

Mr. Rooney: I can give you an example of a thing that I would like you to walk through to see the reference some of this is going to be the cross referencing of different aspects of either the new law or other regulations that where we put things mainly. It may not be intuitive to why we do
that therefore you may have a question for us. Sometimes it's in 1111 (B) (2) (I) and we have in 200.2 and in something else we have that's similar to the law, but we put it in a different section of the regulations that you may be looking for it somewhere and not seeing it where you within the to see it. Let me give you an example. If you go back to page one of the draft red text go down a little bit past the half way mark under the letter B, so it says the assessments required under the section must and then number one I is accept as provided in 200.2 of C in sections 1111 (B) (2) (C) and 1111 (B) (2) (H) and -- 12 of the act. To clarify with a we are saying in this section of the regulations is that the assessments must be the same for all students except for those students who are taking an alternate assessment based on alternate achievement standards for the most significant cognitive.
disabilities. 112 C is the section for eighth 
graders taking advanced math courses. 11 
(B)(2)(H) are for students who are in a 
locally selected in additionalized test. 
They are taking that test now permitted under 
the law. Section 1204 of the act we have not 
discussed at all. It's been eluded to once 
or twice is a pilot authority that the 
Department has to permit up to 7 states to 
create an innovative demonstration assessment 
and accountability system that they could try 
out if you look at different ways to do 
assessments. Make things as confusing as 
possible. All students that should be taking 
the same assessment there's a couple pieces 
it could be the case that will be taken 
different assessments and that's where the 
exception is noted here. 
Ms. Podziba: Do you want to keep 
going I think it's helpful. It sounds like 
what you are doing you are going to walk

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through you are not going to go through every line. Particularly when it's just straight out of the statute. Ms. Jackson do you have a question?

No.

Mr. Payment: This actually is kind of a good segway for our next session. I think we will be getting more into actually the draft language would look like. We can kind of practice out to see how this is going to work. If we believe we need to come up with protocols for parking things and getting through stuff that we don't have any issues with and then come back to the issues that we have parked and then get into the deeper conversations, but I am a firm believer in working through what we can get through and come back to stuff is sticking points.

Ms. Podziba: Me too.

Mr. Rooney: So there's various locations that I wanted us to go on to. The
next piece would be on page two. Hopefully,
there's pieces we can get to faster. Roman
numeral II the first at the top where you
develop the extent practicable, using the
principles for universal design for learning.
We talked about this yesterday in the law
there is a reference in the definitions which
is the back of the law where they defined
universal design for learning the higher
education act which is a different law. This
definition here is that definition so we
talked about adding that into the regulations
to be clear so it's in one spot so that is
where we done a little bit of gymnastic, but
it's not an interpretation or anything
different it's following the chain and
putting it together so that way the
regulations can be a little bit more coherent
for the states an all of you in the field.

Mr. Payment: So maybe what would be
helpful to get to the consensus toward the
end is that so earlier we are going to end up
in some disagreement somewhere down the road
what's regulatory and what's guidance. Maybe
as we go through we try to begin to identify
a standard that we think something should be
regulatory versus something that should be in
guidance because then when we get to the more
difficult stuff we have already worked
through conceptually what's regulatory versus
guidance.
Ms. Podziba: Thanks.
Mr. Payment: I think that's great
and also I think what may happen as we go
through this document is that some of the
items that people were hoping for were -- it
was suggested that some of those things were
already in the statute. So if people can
also flag what's already here that people
were hoping for that might also move us
through it more quickly when we come to the
actual regulatory text.
Mr. Rooney: So then moving on further down this page. We get to 3 (A) and (1) and (2) that this is looking at the assessments under this section must be aligned to the challenging state standards of A one and two depth and breadth of those standards that actually is taken from our current regulations, but it was moved from a different section of our current regulations into here and make it clear what the state assessments would be in these requirements. It's something that's in the current regulations since 2002, but was in different components. I am flagging that as slightly different than statutory update. And then under B kind of following through to number two I think actually the top of page 3 this is where we clarify that for alternate assessments for students with the most significant cognitive disabilities, is the assessments need to measure student
1 performance based on the alternate academic
2 achievement standards defined by the state in
3 consistent with 1111 (B) (1) of the statute.
4 That's where it gives the authority for
5 states to create alternate achievement
6 standards to ensure that a student that meets
7 the alternate academic achievement standards
8 both secondary -- public law 93-112 as in
9 effect of July -- 2013. That quote I
10 apologize for it being a little bit opaque.
11 It's a direct quote from the statute in 1111
12 (E) (1)(E) which is again where the law
13 provides the authority for states to be
14 developed alternate achievement standards
15 provided that they meet this section and we
16 have repeated on regulations and the public
17 law 93-112 is the rehab act. That is that
18 quote in July 14, 2014 is in the statute
19 itself is putting a time stamp of the version
20 of the law that should be used for title one
21 (F) ESSA purposes.
Ms. Briggs: I think the capitol letter E is supposed to be capitol letter D?

1111 B one?

This is where I get really impressed chapter and verse.

Ms. Rigling: The cross reference is correct because it's two alternate academic achievement standards for students with the most significant cognitive disabilities as opposed to 2 d two which is assessments.

Mr. Hager: I have another related one.

Ms. Podziba: Let's let Patrick keep going.

Mr. Rooney: Looking at the bottom of page three.

Ms. Podziba: Ron has a question on romanette 2.

Mr. Hager: This has to do with a conversation yesterday regarding this what the grade level means, and I don't think we
want people that will taking the alternative assessment to be showing proficiency on the grade level. We want to be showing proficiency on their standard which is aligned with the grade level.

Ms. Rigling: I don't think this meant to cover alternate.

Mr. Rooney: Romanette two the way you look at the indented it actually is a subset of 3 if you go back to page two, so (3 (i) all assessments must be aligned with the academic standards and to provide timely information and all of the A's and B's and the C's that went through the alternate achievement standards. Now we are on 3 romanette two.

Mr. Hager: This is meant to be separate from the alternate achievement

Ms. Podziba: Sometimes it's hard to track what goes to what.

Mr. Rooney: There's a part to that.
You will appreciate that the indenting and format is a little hard to follow.

Mr. Hager: It's really three double I is that what that is? Thank you. Others were confused about that, too.

Mr. Rooney: I imagine. Sometimes I have to go back and figure out where I am at.

Ms. Rigling: I think of reg writing as an outline. So you start with a section number so that 200.2, and then you have paragraphs and those are little ABC and D those should all be equivalent and under that are numbers one, two, three, four, five, and under Arabic number are romanette numbers romanette one and little Roman one, Roman two, and Roman three and then you get to capitol A and capitol B and C. In the case at the bottom of the page two and top of page three those B one an B two are actually when you see it in the federal register those will be underlined when they are in the code of
federal regulations they will be italicized.

It's sort of this idea that there's this progression. It's hard to see it here but that's why the romanette two becomes an equivalent to romanette one under three. It's not a subsection under the two which will be underlined that's actually above it. Just want to remind you of all the confusion involved in the translations back and forth it's kind of ironic.

Mr. Rooney: You may want to provide a primer or a guide that might be a little helpful on how they indent.

It won't be indented either every number romanette is indented just five spaces.

Ms. Podziba: We will do our best.

Thank you.

Mr. Rooney: Moving on. I think I pointed out on the bottom of page three on
number five this is a change in the statute under NCLB that a state assessment systems, states had to demonstrate that they were supported by evidence which the secretary will provide upon request consistent with the applicable government laws and exposure from the test publishers that was essentially saying states had to demonstrate and the secretary had to make that available. That part has been changed, and in the new law in the ESSA it's changed to what's on page six. You look at the new little Roman numeral (II) and Roman number two. It's on the state's website. There's a slight change to put it onto the states website to make that information available. I don't know if we need to spend a lot of time on four and five. There's a little bit of reorganization. The language hasn't changed much at all from how that assessment that they could have a single or multiple assessment or over multiple times
1 during the year. The organizational purposes
2 as much as anything else deleted what shows
3 up in the middle of page four about single or
4 multiple question formats and partially
5 developed in and added in that they conclude
6 and that they partially deliberate in the
7 proposed projects or suspended performance
8 passed.
9 Ms. Jackson: For the measures of
10 growth is there a place where that's defined
11 of what's an acceptable significant measure
12 of growth?
13 Mr. Rooney: No. The statute does
14 not define that. It leaves that to the
15 discretion of states.
16 Ms. Jackson: They are required to do
17 it?
18 Mr. Rooney: If you look at number 7
19 it states assessment systems they multiple
20 measures achievement measures that assess
21 higher than thinking skills and understanding
of challenging content as defined by the state. These measures may include measures and maybe partially delivered in portfolios for extended tasks. It's permissive not required.

Ms. Jackson: For the area where it said that growth could be considered not as a replacement for academic achievement for accountability but both could be incorporate. Would the state need to define how they are defining growth? Personally this is in my, I find a lot of frustration where people want everyone above in terms of student growth percentiles we want everyone above 50 percent growth percentile which is just mathematically impossible. I would in that area in the reference area I said before having some clear definition would be really helpful.

Mr. Rooney: Let me make sure I understand the question. Are you encouraging

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21

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1 the regulations to define what is sufficient
growth?

3 Ms. Jackson: Sorry. I would want --
4 I am forgetting what section it is in where
5 it said growth could be -- I don't know does
6 anybody remember? It could be one of the
7 measures that you could include.
8 Mr. Rooney: We talked about it under
9 adaptive testing. I feel like it came up
10 earlier as well.
11 Ms. Jackson: If the state were to
12 define how they are measuring their growth
13 that would be useful. If I am getting too
14 tangential that's fine.
15 Mr. Rooney: So you are going to
16 define it not that the regulation should
17 define it? The regulation should say states
18 should define.
19 Ms. King: Yeah. If you are talking
20 about growth as a measure in the context of
21 the accountability system then there's a
whole other bucket of things including some prohibitions on the secretary's authority to regulate. The transparency about individual indicators and the accountability system if where you are concerned is that if growth is incorporated in the accountability system how do you know what that looks like? The answer is that's in the other planned requirements around the governing requirements.

Thank you.

Mr. Hager: In terms of the other part of 7 involved update of student academic achievement that was in black does that mean it was from the NCLB regs? Is that totally consistent with the ESSA provision now?

Mr. Rooney: Yes, it means it's from our existing regulations and we believe it is consistent with the current statute.

Ms. King: The earlier reference for 11312, if there were words there so that people knew that meant we want --
-- it actually means the rehabilitation act of 1973 as then --

Ms. King: -- that seems even better words to use. Work force innovation and opportunity act.

Mr. Rooney: Moving onto five and it's in the statute at the states discretion the state can have a single assessment or multiple statewide interim assessment during the course of the year that provides valid and reliable transparent information on student achievement and at the states discretion student growth consistent of be four two of this section which references back to the requirement that is the assessments be valid and reliable for the purposes they are being used, and then further in are -- five, we changed the word students to children and we talked about this a little bit yesterday not in this context,

but in the definition of kids with
disabilities that this is specifically referring to children with disabilities as defined under IDEA subsection 603 under IDEA and that's where they define the different categories. And they use children with disabilities that's why we changed it within our regulation to be consistent with IDEA.

Ms. Jackson: Just above the double I multiple statement that general area. I guess I want to note that I know it says transparent information that this one score on what is representing student achievement may have note of limitations in terms of I don't know, like in terms of that being the one definitive way to rate students. I am totally stinking at being clear my brain has hit the wall. I am saying with all of this testing which I am fine with testing, but we sometimes over simplify our interpretation of what a score or a status may mean about our child's achievement or accomplishment the

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Ms. Podziba: Is this statutory and so not changeable?

Mr. Rooney: I believe it's statutory language. This is directly and includes actually that provides reliable transparent student information. It's directly from the statute 1111 (E)(2)(B)(8) So I think that I am happy to go through it now. It would be helpful to flag things now and thing we can bring it back next time or if people want to clarify things now but I am happy to keep walking through it. Turning to page six there are three new romanettes that have been added 7 and 8 and 9 at the top of page six. We wanted to flag three things as they are not in 1111 (B)(2) but in the section talking about data assessment systems. We added them here because they are new requirements for report cards that are identified elsewhere that states now need to start reporting this information about homeless students and

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students who are child in foster care and
students that are a member of the armed
forces. As a result in order to be
consistent with the requirement that states
need to report this information here where we
are talking about the state to make sure they
are disaggregating data on the assessment
that the assessment systems needs to report
data, disaggregated by all of these groups
including these three new groups that they
can report the information as required by
elsewhere in the law. I think Liz has a
question on that.

Ms. King: We would like a definition
in the reg of child and foster care.
Probably would be more appropriate for an
actual proposal. I am happy to back you on
that. I wanted to flag it. I imagine other
people want to talk about it unless I have a
proposal which I don't at the moment then I
would want to talk about it later.
1 It's a great flag.
2 Ms. King: It may be a cross
3 reference to another law.
4 Ms. Podziba: Thank you for flagging
5 it.
6 Mr. Rooney: The next piece after
7 this is just the computer adaptive
8 assessments which we spent a fair amount of
9 time on Monday after. I don't think we need
10 to go through all of that this afternoon.
11 Ms. Rigling: This will reflect
12 whatever agreement we get in subsequent
13 sessions. This isn't the whole computer
14 adapted section that we talked about earlier.
15 Ms. Podziba: This is the blue text
16 on issue paper one so whatever gets added
17 would be in addition to this, correct?
18 Mr. Rooney: Yes, that's correct.
19 Then the next piece at the bottom of page 7
20 it's not in the statute any longer. It's
21 irrelevant to keep in our regulations. That

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gets us through 200.2. I don't know if you
have a -- 200.5 in the current regulations is
around the time line for assessment
administration and when we in our current
regulations this is a lot of identifying when
states have started administering
assessments. Again, we are not past that
time line. A lot of this is not germane to
the new regulations and the current
requirements for states. A lot of it has
been deleted. We did want to keep a section
in that talked about when assessments needed
to be. We still have the requirement that
reading, art, mathematics assessment three
through eight and once in high school, and it
looks like here that the statute changes it
to high school grades for reading, language
and math. It had been once in grades 10-12
and under ESSA it's now at least once in
grades nine through 12. We made that change
here and the science assessments did not

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change at all. Those are the grades I mentioned yesterday that have to.

Ms. Podziba: Maybe it's a good time to take a break before we get into 200.6. So remember that Aaron suggested people who are going to be involved in the subcommittee meet at the Department of education seal to set a time for a call. Everyone else be back by 3: 10.

Thank you.

Mr. Rooney: Page ten. This is the last section. There's a lot to it. I don't know if we will spend a lot of time on all of it. I will go through 200.6. I know we already have a question from Ron.

Mr. Hager: I am just getting in line.

Mr. Rooney: As I start I will flag that this relates to conversation we were having in issue 5 B around ELP assessments and think there's a question on how 200.6 can
1 be referenced, so just flagging that for your
2 thinking as we are going through this so
3 under A it's about accommodations for
4 students. I would jump down to the bottom.
5 If you remember around the definition of
6 where or -- student with disabilities where
7 the language and the statute references a
8 student served under 602.3 of IDA where
9 students are under other acts. I am not a
10 direct quote from the statute but
11 nevertheless. Here at the bottom of the page
12 romanette one and two where we combine that
13 statute with our existing regulations to say
14 that it's for each child with a disability as
15 defined of 602.3 with IDEA and or for each
16 student with disability covered under acts
17 other than IDEA including section 504 of the
18 rehabilitation act of 1973 as amended in
19 section 504 the student placement. This is
20 where we took our existing regulations which
21 talks about students covered under IDEA or

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under 504 and in the new statute. It talks about student accessibility under IDEA other acts and we try to put those two things together.

Mr. Hager: Right up in A in the general language up there because you knocked out section 504 so now the way it's worded as written would be students, I'm sorry, appropriate accommodations for students eligible under the IDEA and other acts. You got to say students with disabilities other acts would be every single act for every student. Do you know what I am saying? Because you crossed out section 504 I think you have to add in student with disabilities in here.

Mr. Rooney: You are talking and under A appropriation accommodations for students and add with disabilities eligible under the IDEA and other acts. Thanks, Ron.

Mr. Hager: I did have a comment on
the language down in that paragraph one, A
one and I'm not sure exactly what you were
intending here. I will read it the way you
have it. You know that the accommodations
that are necessary to measure academic
achievement of the students relative to the
challenging state academic content standards
and aligned academic achievement standards.
Did you mean add alternate aligned with the
grade for which a student is enrolled? I
just don't know what you meant there when you
have it? It's just not clear to me what you
meant by that? That's what I would propose
that it would say.
This is all students with
disabilities this is the aligned achievement
standards that are aligned to the states
content standards. So providing
accommodations so you can measure the
achievement -- content standards an
achievement standards.

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It's intentional?

Mr. Rooney: Yes, this is for all the states.

Ms. King: Just quick point on -- isn't that can't you just say the challenging state academic standards or whatever that I think it will allow it for us to build content and achievement standards.

I am not trying to do the lawyer thing. A larger point slash question I know that there's lots an lots of words and lots of the things about our role that involved with checking in with our constituency that's something that's going to be super important. My constituency has lots of things on things. I want to flag that as overall, and now I forgot the other point I was going to make and I will have to come back.

Mr. Cheeks: So Patrick my question is the striking of section 504 and other acts and leaving other acts was done for what
purpose?

Mr. Rooney: To be consistent with the statute. The statute doesn't call out 504. The statute says students served under IDEA and other acts. We are using the same language here in the title. It's officially not a title under A where it says and other acts, then down below under romanette two at the bottom of page ten where we define other acts include students covered under 504 plan and the accommodations are identified by the students.

Ms. Podziba: Ron, do you have additional comments?

Mr. Hager: This is assuming that the stuff we talked about this is the bare bones of all the stuff that you talked about.

Mr. Rooney: This doesn't include any of the conversations that added in based on the last update.

Mr. Payment: If you change the

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sentence it is not necessary, students relative to the states as article modifying states. It's really now challenging state academic content. I think that's plural but you do have it capitalized, so I don't think you need the word the in front of states so it would be of the student relative to challenging state content standards and aligning achievement standards.

Mr. Rooney: Thanks, Aaron. We are on page 11. This is where we get into state guidelines for -- this section here under number two at the top of the page guidelines that IEP teams for all students that have an IPT this is developing dissemination on and to promote the use of appropriate accommodations and ensuring this general special education teacher and other special staff have assessments including alternate assessments. Those pieces are being added in and they apply to value added IEP teams where

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all students with disabilities have an IEP.

Transitioning --

Ms. King: Sorry to go back to romanette two for each student with a disability, if we are listing out 504 as one example I think we also need ADA specifically title two of ADA. I realize that this is a non-exhaustive list that is what we want.

Mr. Rooney: We made a note of that from the conversation yesterday. I am not an ADA or IDEA expert for any stretch. That's something we will take back to our colleagues and discuss.

Mr. Hager: This is probably more of a clarification again. Under this 2 state part of its IEP that's specifically not included in the 504 team because of the way the statute is written. Maybe just check on that for us. And then this language again is not the alternative achievement standards it's all students again. Thanks.
Mr. Rooney: The bottom of page 11 --

Mr. Ahart: You might clarify it when you speak to this. I want to make sure I got it right.

Mr. Rooney: I will go ahead and see if I can capture. My guess what I say next will tender more question. The bottom of page 11 highlighted in yellow this is a note for how we organized this. I eluded how we reorganized it to match the new statute part of the guidelines for IEP teams were covered in a different part of the regulation which is 200.1 which is around the states content standards. With the change of how things were reorganized under ESSA we thought it made sense to move this next section of the regulations and move it into 200.6 so it's all with where we are talking about students with disabilities and the assessment system.

So on page 12 and most of page 12 I think the requirements are current regulations around

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state guidelines for if a state defines alternate achievement standards. The state must and this is one and two here are for our current regulations that are in place already that states are working with, and then I think once we get down to actually romanettes one and two are clarifications that are in the new -- repeat that -- under B number one and two are from our existing regulations and little i and little ii and romanette one and two are from current statute the new statute.

Mr. Ahart: It would appear that a lot of this is on page 12 and actually through much of 13 and 14 that these are redundant to what's already required in IDEA. Their duplicative of what's already referenced in other parts of the ESSA that's what you are trying to get at in the most recent statement. It seems like it's going to add additional work for LEA's that's actually redundant to what's already
Mr. Rooney: I appreciate that point.
I think everything from number three to the bottom of page 12 through the top of page 14 is all taken directly from the ESSA. It's from the statute from 1111 (B)(2)(D) which is where states are admitted to have alternate achievement standards and assessments for the most significant cognitive disabilities. I think that part is directly from the statute but we are happy to look at that.

Ms. King: Just to use the word defines at the top I think the verb used in the law I think is select or establishes. I don't know if that is a meaningful difference? I don't know if that's defining?

Top of page 12?

Ms. King: That maybe a word admittedly not memorized all thousand pages.

I just want to make sure it's a consistent verb with the verb that's used in the law. 

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because the state does not have to be alternate standards, but if they choose to have alternate standards so whatever that is?

Ms. Rigling: How about adopt?

Ms. King: I will look at whatever.

It is adopt than it sounds like a great word.

Mr. Rooney: Unless people want me to walk through what's here for the guidelines I think it's right from the statute. I prefer not to but I am happy to take questions from 12 to top of page 14.

Mr. Cheeks: How did a situation which was just explained take place because I kept hearing that this came from the law.

How did a word like defines end up being different? I am just curious?

Ms. Rigling: I think the first three lines are our addition to set the context for the rest, I am corrected, it's from the existing regs. I think what we said in the existing regs is we did use the word define

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like a state may define alternate academic
achievement standards and that's why this
said if a state defines, but now that the
statute authorizes the adoption of alternate
academic achievement standards I think we
should use the word adopts. Thank you very
much, I mean that's a very good point of
clarification.

Mr. Rooney: Are there questions on
the state guidelines here in B?

Mr. Pohlman: I think where we were I
was mentioning earlier around the inclusion
of 200.6 in the regulation around the EL's, I
think that Ron had suggested that this is the
section where I was wondering is it necessary
to have these elements in that provision of
the EL's or could we say as we do similar to
200.2 can we separate 200.2 A or whatever and
calling those specific citations in the
regulation itself rather than the whole

thing? I think that we would be overly
inclusive. I would have to parse all of that out. That is what I was meaning at earlier and the part I was looking at the extent to this section, I was talking about what impact for spatial and graduation time. For instance those are on page 13.

    Mr. Rooney: Can you expand? I am not sure I understand?

    Mr. Pohlman: In response to issue paper six that with the new regulatory language that five B -- issue five B that we consider adding also 200.6. My comment to that is I think we needed to parse out within 200.6 where relevant to that section and not simply say the whole part of the regulation was applicable or relevant. We are getting to the part of 200.6 where it may or may not be relevant to include around the EL's.

    Mr. Rooney: Have you seen anything so far in either 200.6 appropriate accommodations for students with disabilities
EL's were under IDEA and other acts and then
that's all of what we looked at on pages, and
11 is A and then B is the state guidelines
alternate achievement standards with
guidelines for IEP teams. Is there something
in there that you think is irrelevant?

Mr. Pohlman: I am wondering about
the consultation and communication about the
impact to a regular high school diploma and
things that may or may not like, like the
testing relevant to the English language
proficiency standards. I don't know if that
has a relevancy to high school diploma's and
whether or not the IEP teams will be confused
or instructed to have conversations with
families about things that actually don't
have relevance, but they need to where states
may need to have checklists. Do you get what
I am saying Liz?

Ms. King: They should be provided

for the ELP assessment, the process for
determining who is selected to participate in
the alternate assessment aligned to alternate
achievement standard that should apply. The
language regarding the alternate standards
themselves and the guidance around the IEP
team that's a question around content
instruction so that child is already included
because they are a child who will receive
instructions that is consistent with the
requirements around instruction provided to
students who will be receiving instruction
consistent with the alternate assessment
aligned to alternate achievement standards.
I think it can be parsed out. I think it's a
matter of just for the purposes of the ELP
what matters are two things. One is to whom
does an alternate assessment of English
language proficiency? Which of those
students with the most cognitive
disabilities, which of the students with the
most significant cognitive disabilities who

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are English learners should be included in
the ultimate assessment of English proficiency
that's issue one. Making sure we have that
identification process clear and then what
for all students with disabilities who are
given the English language proficiency
assessment. What are the accommodations that
are due to them as a child with a disability
so that they have those same accommodations
on the ELP assessment they would have on a
content assessment right is that where you
were going rich?

Mr. Pohlman: If you look at B one
and two clear explanation of differences
between achievement and based upon alternate
achievement standards. How would that be
relevant if you are talking about a provision
for English language proficiency exams?
That's my statement so Liz says it in a way
different than I do. I am looking at, I have
experience with states reading stuff like
this and then being otherly inclusive to
guidance to IEP teams that will then make it
completely unclear to the IEP teams about
what they have to get done during that IEP
team, and they are going to be checking forms
in IEP team meetings that are meaningless,
and I fear only will confuse the families of
students it's not directly relevant that's my
ultimate concern.

Ms. Podziba: Can we leave it to the
Department to isolate what is relevant?

Ms. King: To sort of reinforce
before and I think Kenji and Martha can talk
about children who fit in both categories of
their expertise, but sort of where does the
IEP team fits in identifying child for an
alternate ELP assessment, and how does that
work and then what is the clarity? I think
you are absolutely right, rich. I don't
think there's any value to children or us to
sort of have an irrelevant requirement here.
What we are trying to make sure is that the ELP is a valid assessment, what an English learner with a disability knows about English deficiency.

Mr. Hager: You had said B I had comments on B going forward a little bit on page 13. Are we there? Yes then I do. The first one is the requirements of the little I and just before the four there. Are those right from the statute? Complete the requirements of regular high school diploma and complete the requirements on time that's the phrase they use in the ESSA?

Mr. Rooney: I believe that's the language from the statute.

Mr. Hager: It doesn't use the word on time.

Ms. Thurlow: -- Inaudible.

Mr. Rooney: Martha asked a question about states that rate a graduation time.

For the purpose of this conversation I would
not like to bring it up unless people want to
bring it up it's not -- it might take us off
track.

Mr. Hager: This is all guidance for
the parents on time could mean within the
normal four years it could mean within 22?
You know the guardedness of the participants
is that if they take this assessment, if they
take the alternate achievement standards and
the assessment to go along with it, it may
affect their graduation schedule. Maybe
that's a better way of putting it, is a
better way of putting it. Assuming that's
what you are getting here. What we must tell
the parents if you go down this road and
agree to this it's going to effect, you know,
access to the diploma which is the one and
also the time in which you may graduate may
take longer than typical. I think that's
what the intent that's there?

Mr. Rooney: To go back to the actual
language in the statute it's slightly
different than what's here for romanette one
and two. The requirement is if they identify
how participation in such assessments may
delay or effect the student from completing
the requirements for a regular high school
diploma.

Mr. Hager: Kind of spelling it out

Mr. Pohlman: It's broken out in two
pieces and worded slightly different.

Ms. Podziba: Someday there will be
technology you will press a button and your
name will go on a screen, Ron?

Mr. Hager: I had one more I know the
definition of UDL is to the extent
practicable, but when you are talking about
the state describing how they used UDL I
don't know if you know to the extent
practicable. I think here you are asking
what did you do? How did you utilize
universal design? It really doesn't fit

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It fits earlier in their criteria when they do it. When they are explaining to you what they did you don't need that qualifier.

Mr. Rooney: Thank you. That is a direct quote from the statute. It says describes in the state plan the steps that the state has taken to incorporate universal design for learning to the extent feasible. It's on the top of page ten.

Mr. Hager: Does it include any alternate assessment not other assessments?

Mr. Rooney: So the language here it says in alternate assessments.

Mr. Hager: Other parts of the statute require that they have universal design for learning considered in all the assessments not just the alternate assessments.

Mr. Rooney: Elsewhere in the statute if you look at the top of page 27 of the statute where they are talking about all the

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assessments Roman numeral little 8 all assessments must be development to the extent practicable for the universal design for learning. It's why we had that reference earlier. We incorporated the definition of UDL there so that it's referencing all the content assessments Rich's point that's talking about the English language, arts, math and science this is where it references UDL.

Ms. Podziba: I think you can keep going.

Moving to page 14 Roman numeral C alternate assessments is it here we are adapting where revising the current regulations because to include the statutory terms where we reference that the states academic system develop consistent with 600.2 which we walked through must provide one or more alternate assessments for a child with a disability as defined by IDEA, and then say
provided such alternate assessments looking
down a little bit to Roman numeral I the
academic content standards under section 1111
B one act. I think because we are making
those changes we slightly provide language
which we deleted alternate assessments yield
assessments, yield results for the grade
which the student was enrolled and if we
reference the content assessments earlier we
don't need to reference them here and except
for students with the most significant
cognitive disabilities alternate assessments
must on the top of page 15 the aligned with
the challenging state that can accompany
standards and the overall results and the
achievement of the ultimate academic
standards that the states have defined.

Ms. Podziba: Let's take a pause
there.

Mr. Hager: Here's where I think
there is a problem with the cuts and paste

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method. There's two alternate assessments one which is in one and two which is for the students with the most significant cognitive disabilities. Where is the authority for the other one that's in one? Because I know that the intent of the statute was to have you know one alternate assessment in D and E is the one standard and D is the assessment. I don't know how you are getting two assessments, two alternate assessments?

Mr. Rooney: I think this comes from the interaction from ESSA and IDEA, where IDEA says states must have an alternate assessment, but does not define that alternate assessment ultimate academic achievement standards under ESSA states then must have an alternate assessment, and they may have an alternate assessment based on alternate achievement standards. I think as you read those two pieces together it's where the potential that states could have multiple
assessments. If they have an alternate
assessment other than the one we have been
talking about yesterday aligned to students
with the most significant cognitive
disabilities then the requirement is that
test measured grade level achievement and
aligned the challenging academic and
achievement standards for providing
comparable information as the general
assessment.

I would suggest then in the C one
little I say our fully aligned with the
challenging state academic content standards
make it very clear it's not 2% it's fully
aligned. I know what you are talking about
and I don't know how they all fit in what
original no child left behind which is maybe
in the regs for no child left behind and is
this still a requirement of idea. We have
the regular assessment and then you have a
regular assessment with the accommodations

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and that are fully aligned with state content, and then you added alternate assessment that also fully aligned with state content standards, then you had the two percent which is now gone, and then you had the alternate academic achievement standard. If this is referring to fully aligned, I think you need to be very clear that it's fully aligned one.

Mr. Rooney: That's fair. That was the reference we are trying to make here. I will say that I think there may only be one state that has such an aligned assessment alternate assessment aligned to grade level achievement standards. It wouldn't be a hard thing to do. I am sure.

Ms. King: I think this is where the ELP assessment goes? Unless there are other thoughts under C, alternate assessments? I am also still confused about this extra test but I think I am going to have to read the

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whole thing as a whole thing. Somewhere in here there should be in the list of reading, language arts, math and science should also include language proficiency. I think probably also more words so that not everybody is taking the ELP assessment, but only English learners are taking the ELP assessment. I think there was -- do we know what ESSA did regarding alternate standards that were not alternate standards aligned -- Are you asking about modified standard? Yes, there's an explicit prohibition in the statute of the existence of something that is alternate standard that are not -- there we go. I'm back yes, we have there's a prohibition in the statute against those alternate standards on anything, but Martha do you have any thoughts on the subject?

Ms. Thurlow: I thought I remembered.
You guys will know better that there was a prohibition against any alternate assessment other than the alternate assessment based on alternate achievement standards.

Ms. Rigling: Can I read it it's on my page 19. It's on my page 19. It's in the standards part. It's prohibition on any other alternate or modified academic achievement standards. Says the state shall not develop or implement for use under this part. Any alternate academic achievement standards for children with disabilities that are not alternate academic achievement standards that meet the requirements of clause one. Those are alternate academic achievement standards for children with most significant cognitive disabilities.

Ms. King: So that leaves us I mean I feel like we have put so much rhetorical effort at least into reducing the number of assessments. Doesn't that then leave us with

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their, I think I'm still puzzled to why this is a regulatory reference to these alternate standard that is are not those alternate standards.

They are not alternate achievement standards that's the distinction that's very nuance. This is you have an alternate assessment based on grade level achievement. So it's saying the same amount of information and same content in order to be proficient on the alternate assessment versus the general assessment. That is not prohibited.

Ms. King: What is the relationship between that assessment and ESSA?

Mr. Rooney: ESSA does not speak to it. You cannot have any alternate achievement standards for students with for children that are not alternate achievement standards that meet the requirements under clause I. You can set grade level achievement standards you can alternate.
Mr. Rooney: I think that the distinction is that I have to try to say this clearly. States have the permission to create alternate achievement standards and assessments that measure those standards. States also have to create grade level achievement standards and develop assessments that measure those. They can create one general test and an alternate assessment as long as it's measuring the same achievement.
1 standards I don't think ESSA speaks to that
2 at all.
3 Ms. Rigling: IDEA does. It
4 specifically authorizes alternate assessments
5 equity level based on grade level
6 achievements
7 I am just puzzled to what this is
8 doing in the ESSA regs. I hear that states
9 are allowed to do that but I mean I can move
10 on.
11 Ms. Rigling: We are trying to be
12 consistent as we said yesterday with the
13 IDEA. This is also consistent with position
14 that was taken since the beginning of NCOB
15 under the ESEA where we felt because of IDEA
16 1997 that required a state to have an
17 alternate assessment that if before we
18 authorized alternate assessments based on
19 alternate achievement standards they had to
20 have an alternate assessment based on grade
21 level achievement standards. We felt like
that's still an authority that they can use.
I think your concern is probably that if a
state tries to do that it may not be at grade
level and I think we are very concerned too.
We would hope that the peer review process
would look very carefully at alternate
assessment designed to be measuring grade
level achievement standards to make sure that
it was in fact measuring grade level
standards.
Ms. King: My concern is more I think
we want to be abundantly clear there are
narrow assessment requirements under ESSA and
there's narrow rules who includes which
assessment everybody including that and all
of that and there's assessment data. I am
not, I do like regulating when we need to.
If we don't I am not sure. I feel like it's
confusing. I might be totally missing
something I am happy to move on and then go
talk about some with colleagues with more
Ms. Podziba: That's a good idea and if you and the Department have a conversation offline. The rest of us are glazing over.

(laughter)

Mr. Hager: I have one still on this one that I have another one for the other one. It's critical that not be part of the peer review process. This is a compliance issue. If a state develops an alternate standard that is not fully aligned with the gray content it's a violation of the ESSA. It has to be fully aligned with the grade level content. The only exception is the alternate achievement standards. It's not just peer review. It's a violation of the IDEA and the ESSA, so you have to be if you are going to be this. I am going to end it here. If you are going to put it in here it's very helpful to cross reference the authority for it. Make sure if you are very
clear it's fully aligned not an alternate achievement standard and C that it's not something subject to peer review. I do have another comment which is two. This is kind of going and then I am pretty much done. This is carrying over the idea we talked about with Martha yesterday about the alignment of the alternate achievement standard with the grade level. If you go to the top of page 15, aligning with the challenging academic content standards for which the grade in which the child was enrolled. I would suggest adding that phrase here to make that clear that this is basically what we talked about yesterday since it's here just putting it in.

Mr. Rooney: To clarify you mean in Roman numeral I?

Mr. Hager: At the top of page 15.

That the alternate achievement standards are aligned with the challenging state content

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standards for the grade in which the student is enrolled, so we have a fifth grade student the standards are based on the fifth grade standards it's not the same standards as an example.

Mr. Rooney: I was going to say that in Roman numeral two we have the same problem where we use the word define where we should have the word adopted, so we say standards in the state has defined. We should say adopted so we are consistent with our language.

Ms. Jackson: I have been investigating other things while you are talking. I am wondering and I have lots of questions that are probably out of the scope of our work. I am intrigued to not totally inundate you what would be the best way for me to direct questions to the Department in between our meetings to sort of filter and see if it's appropriate for a response?

Mr. Rooney: I defer to you if
there's a protocol for this.

Ms. Podziba: You can send me the questions and I will distribute it to me and everyone in the department. Let me think what's the, let me think about that question for just a few minutes. Thanks.

Mr. Rooney: We are still on page 15.

So number three which is right in the middle this is where we get into the cap at the statewide level of the number of kids taking alternate assessment based on alternate academic achievement standards AAAES -- so this is where we get into that section that we spent some time on yesterday. This is the statutory language I don't want to spend a lot of time on it. There's a requirement that the state not assess more than one percent, and then number four the state may not prohibit an LEA for assessing more than one percent and this is in a statute that if an LEA see if one percent of it assessed on
1 alternate assessment they must provide
2 information to the state justifying the need
to do that and the state must provide
4 appropriate over sight of their LEA's that do
5 not provide sufficient justification.
6 Mr. Ahart: I would just like you to
take a second look at romanette three at the
8 bottom of 15 there. It seems that is it
9 expands the statutory language a bit.
10 Mr. Rooney: I think you are right.
11 If you look at the statute on page 29 at the
12 very top this is about there's no prohibition
at the bottom of page 28 and then on page 29
14 the state should provide appropriate over
15 sight at determined by the state of any local
16 education that's required to submit
17 information to the state so I think the so I
18 think your suggestion is that language be the
19 same language and here we say LEA does not
20 provide sufficient information justification
21 you want to say of all LEA's that exceed one

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percent?

Mr. Ahart: Right. Thank you.

Ms. King: I would certainly not say of any LEA. I would want to use a different word and say in the event that just to start with the expectation which I realize is not an additional restriction, but start with the expectation that LEA not assess more than one percent on the alternate assessment not that it has any effect on the ability to do that. I would change the word any. Also, we don't we can rehash the -- it's not helpful because you are going to take that into consideration.

I don't see the need to change the statutory language that's my response to Liz's comment.

Mr. Rooney: It's not all LEA or any LEA that exceeds one percent of its testing students. Okay.

Ms. King: I'm sorry it doesn't say...
any except-- LEA exceeding the cap shall

submit that what you are referring then say

instead of saying any say A or and.

Mr. Rooney: If you look on the next

page. A state that exceeds one percent then

the state has to provide over site of any LEA

that submits that information. I think

that's the point Thomas is making.

Ms. King: Okay.

Mr. Rooney: The top of page 16. So

this is just noting that the state may

request at the secretary wave the cap of one

percent. It's noting the exception that's

noted in the statutes. Then D is reporting

this is something states are currently and

have been reporting for the last 15 or so

year ins our regulations and so we changed

some of the language a little bit to update

to be consistent with the ESSA, but it does

not change this expectation or reporting.

You can see under Roman numeral four on page
16 where we eliminate the mention of modified
achievement standards and it's no longer
permitted and then we are onto E. This is a
little hard to see in the way that on page 16
at the very bottom.

Mr. Hager: I did have a question on
this the first one the triple 3 again just
make that clear about the fully aligned to
keep consistent with the same one, and then
you have the four I think you crossed out the
five or is it crossed out. Is that five that
little romanette five crossed out? It's four
then we alternate assessments aligned with
the alternate academic achievement standard.
It's just fully again. Thanks.

Mr. Rooney: All right. E is talking
about English learners. So I don't know that
there are we are going to page 17 this is
where we use the language that's in the
statute about identifying other than English

is was significant extent in student
1 population and identifying existing
2 assessments -- are available and indicate the
3 languages other than English that are present
4 to a significant extent in the participating
5 population in which -- are not available and
6 must make every effort to develop native
7 language a-- present to a significant event.
8 All of this is breaking up into smaller
9 pieces to make it a little more but trying to
10 copy what you spent a fair bit of time
11 talking about this morning.
12 Ms. Pin Ahrens: At the top of page
13 17, big A, it says a reasonable
14 accommodations. I don't think that's part of
15 the statute that should be appropriate
16 accommodations; is that correct? Is that a
17 typo?
18 Mr. Rooney: That's from our current
19 regulations and --
20 Ms. Pin Ahrens: We should update to
21 match the new one on page 25. Number two
under Roman numeral 7 if I said that correctly?

Mr. Rooney: You mean capital three?

Ms. Pin Ahrens: Yes, I'm sorry, it says appropriate here it doesn't say reasonable anywhere. If it were present I would say we should strike reasonable and replace it with appropriate.

Mr. Rooney: Thanks for that. I think we can jump across page 18 and page 19.

Ms. Ricker: Just wondering based on this conversation if at the top of page 18 where it says a state may request assistance from the secretary and identifying linguistically and academic assessments that are needed. If we can add in there based on this morning’s conversation a state or sovereign nation or is that authority already implied in sovereignty? I don't know or would that be the place to add it?

Mr. Payment: I think that maybe one
of my clarifications that I am going to ask
for in another request for consultation.
Ms. Podziba: Can you try using this
mic again just because people then we have
got speakers and some people can't hear you
through that other mic. Thanks.
Mr. Rooney: It's possible it might
work better if it's close to myself. Moving
to page 19 unless sorry, Leslie, did you have
something?
Ms. Harper: For clarification for
Mary Cathryn and coordination with Aaron's
statement if you go all the way back to the
beginning and insert 3127 considerations on
page one except as provided in 200.6 in
sections and section 31.27 which would define
native American language medium students,
then here on page 18 you would insert and
native American language medium students
under big number two.
Mr. Rooney: I'm sorry I had trouble

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following. From the beginning of where for
the citation you mentioned?

Ms. Harper: On page one talking
about state responsibilities for assessment
it's near under two little two B little I.
It's down in the bottom third except as
provided in 200. 6 C and 11 B 2 H and 1204
of the act we could insert there students
covered under 3127 that would define native
American language medium students as we
talked about in today's conversations making
a clear definition and a clear recognition of
those students. We would have that reference
and then Ms. Ricker was asking about the
inclusion of state or sovereign nation on
page 18. When we describe our students if we
have that definition of native American
language medium students which is already
recognized in section 31.27 of this law then
that is understood to include the student who
is are included in those programs, native

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American, native Hawaii and Alaska native student who is are being educated in the medium of their own language that would cover what Mary Cathryn was asking and that's what we would take back.

Mr. Rooney: Can I ask a clarification? I think the results if I am corrected in thinking this of adding on page one the reference here mentioning then you would exempt all of native American students from the assessment system all together. I think it would.

Ms. Harper: No, as participating in Native American language medium programs.

Mr. Rooney: Those kids would be exempt from the assessment? There would be no assessment for those students?

Ms. Ricker: It's a consideration.

No they would be given their alternative assessments. Again what we talked about as designing those assessments in the language.
of instruction.

Mr. Rooney: That's different than the exception which is that. Sorry I think we will take that back and consider it. I am not sure I understand exactly then they would not be covered? All of this would exempt those students from having anything with assessments? I think if I understand where you added.

Mr. Payment: The model of Puerto Rican exception is what we are asking for to the extent to which a state would align an assessment. I guess we are not using align any more. Have an assessment that is consistent and it works that's fine. If they don't then it would be an exemption.

Mr. Rooney: This part of the law applies to Puerto Rico as well. The only exemption that I have is testing the student in a native language in English after they have been enrolled in school for three years.
They can continue to test those students in a language for more than three years that is an exception for the students made in the commonwealth of Puerto Rico. The rest of the regulations apply to students in Puerto Rico the same as they apply to students in any other area of the United States.

Ms. Harper: Let's put a pin in that and check in it and the next section is where you would insert that reference as well.

What page are you on, may I ask?

Mr. Rooney: We are on page 18.

Leslie was suggests that we going to page one.

Mr. Wilbanks: Oh lord. (laughter) can I ask you to go back to just 17. I get the under reasonable accommodations the first part of I made in the first half of the page the rest of it how much of this is not in the statute?

Mr. Rooney: On page 17? I believe
this is all directly from the statute.

Mr. Wilbanks: Verbatim or paraphrase?

Mr. Rooney: Verbatim. If you go to page 29 of the statute you look at letter F half way down the page. So this is where the state plan shall identify the languages other than English significant to the significant population of the -- annual student assessments are not available and needed.

Mr. Wilbanks: Did you say to what extent?

Mr. Rooney: So that if you -- yes to a significant extent is there.

Mr. Wilbanks: Significant extent, okay.

Mr. Rooney: If you go down to Roman numeral two they will -- may request assistance from the secretary if it's fully accessible if accessibility measures are needed.
Mr. Wilbanks: All right.

Ms. Podziba: Leslie, are you done?

Ms. Harper: For a moment.

Mr. Evers: Just in general I hope that we are not and I know we have done some small things that help people understand, but I hope we are not including things now in the regulations that are part of what we kind of negotiated or you know what we have talked about for the last three days in here now. I don't know if that's happened but if it has I would reconsider.

Mr. Rooney: Our intent of this was this is based on not the discussion of the last three days that this is based on what was in the ESSA.

Ms. Pompa: I was going to ask that in a different way because I was moving onto 19 and going to remind you because I hear people reminding you of things we talked about this morning. This is where I would
put the statewide assessment. Under this understanding that we are talking about that next time. We put a pin in it somewhere I am fine.

Ms. Podziba: Just to clarify this text is meant to reflect statutory changes and not negotiated changes. The negotiated changes they are not changes but what the Department heard and what they, the Department will provide different regulatory text that reflected the conversation. We are trying to get through this. I think the point that the Department is trying to do is to in order to make our discussions more focused as Aaron was suggesting so that we can clear through what doesn't need to be discussed because it's statutory. I think what their proposing is to get through all of this is so that when we come back we will be able to focus on that which needs to be negotiate that had is not statutory that's more in the

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vein of where the statute may need to be
further refined and described.

Mr. Rooney: That's right Susan our
intent will be to try to make clear that what
we went through today either make this the
blue text so you know this is the statutory
pieces and bring back for the group's
discussion and consideration how we respond
to the different comments we heard over the
last three days so that way you can see the
pieces together and see how we are trying to
address the comments everyone is making.

Mr. Payment: Just in the spirit of
referencing other laws or corrections to make
it clearer that's actually that's
what -- does someone have control of my Mic
here? I have 16 siblings back home I have
learned how to project. In the spirit of
trying to make sure that the law is clearer
and reference to other law that is effect our
population that's why we brought it up at
this stage. I think it's appropriate at the next level and we are going to gather input for it and exercise our right under the Department rules for consultation, so this is why we brought it up. We do think we are satisfied putting a pin in it and coming back.

Ms. Podziba: We may need to end. We lost all the mics.

Ms. King: Don't worry ours still works. It will be just me from now on I will do all the talking. It's all part of my plan.

Mr. Rooney: I think we are just about done and not the next piece on page is around assessing English proficiency. We spent a little bit of time on this on five B. This is the language in the statute. It doesn't include the discussion we had. I don't know if it's worth our time to go through this component. Number four which

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starts on the bottom of page 19 is for recently arrived English learners and this is taken from this statute where our regulations in the past and not 2007 the Department put out regulations that address recently arrived English learners so student ins their first year in the United States exempt from one administration of the reading language arts assessment but they have to take the math and science assessments but right at some flexibility in the accountability system when ESSA passed that include that had regulatory permission is now in the statute which is what's in here, but it also provided the new law provides an additional point for -- okay. If it's okay I would rather not go through this piece because this doesn't include I don't think the updated statutory components of recently arriving -- including in the system our intent that we will just repeat what's in the statute four here it's not
currently there so right now the language is mostly just talking about changing the limited English proficient to a English learners after a few other minor changes and on page 21 I will just go through this quickly then I will be done. Definitions related to English learners on number five which are not changed and then we had eliminated the last piece under number two on page 22 I think it's no longer in the statute. I will stop there there's a couple questions.

Mr. Evers: Yes, I apologize, too. I missed something I wanted to talk about. I was thinking about the root canal I am having tomorrow. (laughter). Anyway page 17 B. If we just put a pin on that double check that's the actual language. I am not convinced that it is.

Ms. Rigling: The bottom half?

B identifying the existing --
Ms. Jackson: Okay, so I am probably totally lost so I am going to throw something out there and just for your consideration sometimes there's subgroups referred to where the list is very similar. So we are on page six when it's talking about economically disadvantaged students, homeless status and children in foster care and a parent in armed forces there's that list. If you look back on page 21, I can't honestly keep track of what this is referring to. It has migratory and other mobile students and students experiencing homelessness. As a teachers who works with kids effected by trauma often unnecessarily separated from their peers. I am just curious about where these groups are coming from like why they are different in some places I am sure there's a good explanation and where there maybe room to connect them to the section on student’s who have been neglected or delinquent.
Mr. Rooney: That's a good -- experiencing homelessness. It is referencing the same actual section of the law about the section 7252 of -- of the act.
I think we can try to provide consistent language based on that.

Ms. King: It may be what Audrey said. This is where the definition can go here or I guess its children in foster care I can't remember the right words, child in foster care it would go here or both.

Mr. Rooney: So we will take that back that's a good suggestion. We will try to figure out how to best handle that.

Ms. King: I don't know if you put students in the armed forces the distinction on the different times and different grown-ups are listed distinction between those students included as subgroups for accountability or for reporting purposes. I think it's just a distinction to Audrey's
question, but the answer is we pay a lot of
attention to who's on this list. I don't
know if you then need to also put student
with a parent who's a member of the armed
forces here as well. I don't know if it
matters if you have the same definition twice
when you referring to the same thing, but I
don't think we use these terms anywhere else.
Anyway, I will stop. I don't think we
defined economically disadvantaged but its
other places in the law.

Ms. Jackson: That's where I was
curious about 1401 and 1402 just children who
have been neglected and delinquent. Just if
there's any space to if it would be
appropriate to connect in anyway those text.

Mr. Payment: There's some
distinctions under EQWA in HL welfare. We
have a state licensed foster care agency
within our tribe but not all tribes have that
and they do follow federal law. They may not
be quote unquote foster kids they may be in
tribal care pursuant to another federal law.
So I think however or whatever term we come
up with it needs to be exclusive rather than
exclusionary, inclusive rather than
exclusive.

Ms. Jackson: If you are talking
about a population that changes frequently
for yearly accountability tests a child in a
foster I have had children in and out of
institutions and foster care and family care
and mental health institutions just in a span
of six months. So the expanding it would
actually serve to include more children who
may need consideration.

Ms. Podziba: This is starting to
sound like something we can negotiate.
Perhaps we can set it aside when we have
draft language or at least a flag where it
goes. I realize that was a slog but we
actually made it through all of that reg
text. I understand that the Department is going to turn the red on those pages into blue. The text that will be focusing our negotiations on will be the red text from the issue paper that is we discussed. I am happy to tell you that we actually have someone who's going to make a public comment. I would like to make time for that person to do that and that is Adam Fernandez.

Are we going to talk about process and next steps after that?

Mr. Fernandez: I'm a legislative attorney at MALDEF. We are a nonprofit of rights law firm largest Latino civil rights law firm in the nation. So this morning we discussed a bit in section EL's and accommodations for content assessments.

There's quite a bit of discussion about the clause every effort to develop assessments.

I just wanted to first take a legal historical perspective and say that clause
was in NCLB and that a lot of the discussion
around like is new like what has to happen it
was a little concerning to me. I want to
first say that I really support what Rita
said about title six and EEOA applying
because this has been around since NCLB, and
it's actually in the NCLB regs. And if you
flip to page 17 it was actually in on the top
of the page reading from my notes here it
says the state must assess English learners
invaluable and reliable manner that including
reasonable accommodations that pretty much
addresses a lot of what we were discussing
this morning. Like it's been in the law
since I'm not sure when the regs came out but
it's been in the law for years, so finally
like I think that it should continue to stay
in the regs I think we went over it when we
went over page 17 there didn't seem to be
objection. If there was objection to keeping
it in there I just like to give the Legal

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civil rights perspective that when I know we are dealing with rights like this federal law trumps concerns such as whether or not local law that is an English only law, and you know this sort of budgetary concerns that were discussed this morning. As an analogy let's say we are talking about accommodations for persons with a particular type of disability like a blind student that if a state passed a law or a locality passed a law that says we are not going to give accommodations to blind students that the IDEA and section 504 would just trump that as Rita mentioned title six equal education opportunity act would trump this as well, so I just wanted to make sure that perspective was said. I am happy to give my card to anyone who has any questions thanks for the opportunity.

Ms. Podziba: I am now going to go over next steps. First of all the subcommittee meeting, the subcommittee
conference call is set for March 30, 2:30 to 4:00 p.m. eastern daylight time. The Department will provide a call in number. I will send the call in information to all of you. Okay so it's everyone all committee members are invited to participate. The Department will also provide a resource person to the subcommittee to answer questions that arise during that call. That's the subcommittee 2:30 to 4:00 p.m. eastern daylight time. That's important because there's a state that doesn't switch. Okay. The next meeting is scheduled for April 6-8 beginning at 9 a.m., 9 a.m. to 5 p.m. each day. You can expect to receive from me a draft summary of this meeting very brief not more than a page and a half just a very brief summary of our meeting and at our next meeting we will take any changes or revisions to it and then approve it and after you approve this summary it will be public

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document. I also send a draft agenda for the
next meeting. The Department will send draft
regulatory text. That will be reflective of
the discussion that you had the last three
days. Patrick, I don't know if you want to
say any more about the draft regulatory text?
No? Okay. That was easy. Okay so those are
the next steps and what you can expect. Are
there any other items?

Ms. King: I was wondering if we are
all going to communicate either sort of in
writing? Is it helpful to circulate words
on paper for example for limited things about
a definition of child and foster care or
broader things about, hey, what if we did
this? Is that appropriate or do we just wait
until we get all back together again or in
the event the Department gives us something

to respond to are we going to respond to back
and forth in writing or we all just going to
meet again on the sixth.

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Ms. Podziba: It's not unusual and I think it can be helpful if you have proposals that you would like people to look at before the next meeting. If you send them to me I will distribute them to everyone. In terms of the Department's language given that our meeting is literally two weeks from today my hunch is there's not going people will get the regulatory text and they will be going through it so to get responses to it from other people I think just we will have limited use just because I expect people will be spending most of their time getting input from their constituents at this point. That's what everybody will bring back.

Mr. Hager: Just a clarification of that when the Department is going to have the text and share it we are allowed to share it with our constituency groups not general public is that the distinction or is it public or I know there was talk about public

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when we talk about our process?

Ms. Podziba: That's the draft summary isn't a public document until it's finalized. I believe all the documents that the Department circulates are public documents.

Mr. Rooney: We will make all of these documents publicly available on our website once they have been sent out to all of you they are public documents for all viewing.

Ms. Podziba: I am going to give you the floor to close the meeting.

Mr. Rooney: I will be brief. I know that's the last thing between our adjournments. I want to thank you all for very thoughtful and considerable comments. I appreciate everyone for sticking with us for three very full days of discussion. I am looking forward to coming back with some suggestions based on this conversation and
continuing this conversation and in two weeks. I know that there's a lot of work before us and I really appreciate everyone's dedication and commitment to it. I look forward to seeing you all very soon. Thank you all.
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